(26,113)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 646.

THE NEW YORK CENTRAL RAILROAD COMPANY, PETITIONER,

vs.

SAMUEL GOLDBERG.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a Service of 3 copies of the within case on appeal to the Court of Appeals of the defendant-appellant is admitted this 24th day of February, 1915.

GOLDSMITH, ROSENTHAL,
MORK & BAUM,
Att'ys for Pl'ff-Resp't.

9103–73.

Court of Appeals, State of New York.

SAMUEL GOLDBERG, Plaintiff-Respondent,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant-Appellant.

Case on Appeal.

"Record Certified."

Alexander S. Lyman, Esq., Attorney for Defendant-Appellant, 3516 Grand Central Terminal, New York City.
Goldsmith, Rosenthal, Mork & Baum, Attorneys for Plaintiff-Respondent, 35 Nassau Street, New York City.

Law Register, N. Y. C. R. R. Co. and Leased Lines, No. 24, p. 263. 7/5/'17.

1 Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Statement Under Rule 41.

This action was commenced on the 31st day of March, 1913, by the service of a summons and complaint upon the defendant.
The answer of the defendant was served upon the plaintiff on the 19th day of April, 1913.
The name of the plaintiff is Samuel Goldberg.
The name of the defendant is The New York Central and Hudson River Railroad Company.
There has been no change of parties or of attorneys since the commencement of the action.

2 *Notice of Appeal from Judgment.*

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

SIRS: Please Take Notice that the defendant herein, The New York Central & Hudson River Railroad Company, hereby appeals to the Appellate Division of the Supreme Court, First Judicial Department, from the judgment entered in this action in the office of the Clerk of the County of New York on the 21st day of February, 1914, for $749.38, and from each and every part thereof.

Yours, &c.,

ALEXANDER S. LYMAN,
Attorney for Defendant.

Office & P. O. Address, 3516 Grand Central Terminal, Borough of Manhattan, New York City.

3 To Goldsmith, Rosenthal, Mork & Baum, Attorneys for Plaintiff, 35 Nassau Street, Borough of Manhattan, New York City and William F. Schneider, Clerk, County of New York.

4 *Summons.*

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

To the Above-Named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's Attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, New York, March 24th, 1913.

GOLDSMITH, ROSENTHAL,
MORK & BAUM,
Attorneys for Plaintiff.

Office and P. O. Address, 31 Nassau Street, Borough of Manhattan, New York City.

5 *Complaint.*

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff,

against

NEW YORK CENTRAL AND HUDSON RIVER RAILROAD CO., Defendant.

Plaintiff complaining of the defendant, shows and alleges:

First. That at all the times hereinafter mentioned plaintiff was engaged in business at The City of Cincinnati, State of Ohio, under the name and style of The Main Cloak & Suit Co.

Second. That at all the times hereinafter mentioned defendant was and still is a common carrier of goods for hire, and is a domestic corporation.

Third. That on or about the 17th day of September, 1912, at The City of New York, in consideration of a reasonable compensation, then agreed to be paid to it by the plaintiff, and which compensation was the usual freight rate for dry goods between New York City and Cincinnati, the defendant agreed safely to carry to Cincinnati, Ohio, and there deliver to the plaintiff certain goods, the property
6 of the plaintiff of the value of Six hundred and ninety-three and 75/100 ($693.75) Dollars, consisting of shawls, muffs, and other dry goods, which merchandise was then and there delivered to the defendant and which defendant then and there received upon the agreement and for the purposes before mentioned.

Fourth. That the said goods mentioned aforesaid were delivered to the defendant by the firm of Steinbach Bros. & Co. for and in behalf of the plaintiff herein and the defendant accepted the same upon the express condition that the freight charges upon said merchandise were to be paid upon delivery to the plaintiff.

Fifth. That the defendant did not safely carry or deliver the said goods pursuant to said agreement, but on the contrary the defendant negligently lost the same or permitted the same to be stolen, to the plaintiff's damage in the sum of Six hundred and ninety-three and 75/100 ($693.75) Dollars.

Wherefore plaintiff demands judgment against the defendant for the sum of Six hundred and ninety-three and 75/100 ($693.75) Dollars, with interest thereon from the 17th day of September, 1912, besides the costs and disbursements of this action.

GOLDSMITH, ROSENTHAL,
MORK & BAUM,
Attorneys for Plaintiff.

Office and P. O. Address, 31 Nassau Street, Borough of Manhattan, New York City.

7 COUNTY OF NEW YORK, *ss:*

Samuel Goldberg, being duly sworn, deposes and says: that he is the plaintiff in the within entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

SAMUEL GOLDBERG.

Sworn to before me this 26th day of March, 1913.

HARRY ZADUK,
Notary Public #15, *Commissioner of Deeds, City of New York, Register* #4022.

8 *Answer.*

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant.

The defendant answering the complaint of the plaintiff herein:

1. Denies that it has any knowledge or information sufficient to form a belief as to each and all of the allegations of the complaint contained in the paragraphs or subdivisions thereof designated "First," "Third," "Fourth," and "Fifth."

Second.

For a further, second and separate defense, the defendant alleges, upon information and belief, that if it received the property mentioned in the complaint the same was received by it for transportation pursuant to the provisions of a written contract theretofore entered into between Steinbach Bros. & Co. and the defendant, a copy of which is hereto annexed marked "Exhibit A" and made a part hereof; that in said contract the property delivered to the defendant was described as one case of drygoods; that thirty days

9 prior to the 19th day of September, 1912, the defendant had published, posted and filed with the Interstate Commerce Commission as required by law, copies of its classifications and schedules of rates, fares and charges for the transportation of, among other things, dry goods and furs from New York City to Cincinnati, Ohio; that in said classification it was provided that articles described by the shipper as dry goods would take first-class rate and that articles described as furs would take double first-class rate; that defendant relying upon the description contained in said contract

or bill of lading agreed to transport the said property at the rate provided for the transportation of dry goods, namely, 65c. per 100 lbs.; that had the said property been described as furs defendant would have charged for the transportation thereof double first-class rate, or $1.30 per 100 lbs.; that while said property was in transit it was stolen without negligence on the part of the defendant; that thereafter the shippers of said property presented to the defendant a claim for the alleged value of furs claimed to have been contained in said case when delivered to it for transportation amounting to $693.75; and the defendant alleges, upon information and belief, that at the time the said case was received by it it contained furs and not dry goods, of which fact the defendant had no knowledge or notice until after said property was stolen.

Wherefore, defendant demands that the complaint be dismissed with costs.

ALEXANDER S. LYMAN,
Attorney for Defendant.

Office and P. O. Address, 3516 Grand Central Terminal, Borough of Manhattan, City of New York.

(Here follows bill of lading marked page 9*a*.)

P. T. D. 24.

New York Central & Hudson River Railroad Company

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

Shippers No._____

Agents No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

at New York City. 9/17/12 19

from Stainbach Bros & Co the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from_____

_____ is in Cents per 100 lbs.

Times 1st	If 1st Class	If 2d Class	If Rule 25	If 3d Class	If Rule 26	If Rule 20	If 4th Class	If 5th Class	If 6th Class	IF SPECIAL per	IF SPECIAL per

(Mail Address—Not for purposes of Delivery)

Consigned to The Main Cloak & Suit Co.,

Destination, Cincinnati, State of Ohio. County of_____

Route,_____ Car Initial_____ Car No._____

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Class or Rate	Check Column	
					If charges are to be prepaid, write or stamp here, "To be Prepaid."
	One (1) case Dry goods.				

P. T. D. M.

NEW YORK CENTRAL LINES

New York Central & Hudson River Railroad Company

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

Shippers No._____

Agents No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

at New York City. 9/17/12 19

from Steinbach Bros & Co the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from_____

_____ is in Cents per 100 lbs.

Three 1st	If 1st Class	If 2d Class	If Rule 25	If 3d Class	If Rule 29	If Rule 28	If 4th Class	If 5th Class	If 5th Class	IF SPECIAL per_____	IF SPECIAL per_____

(Mail Address—Not for purpose of Delivery)

Consigned to The Main Cloak & Suit Co.,

Destination, Cincinnati, State of Ohio. County of_____

Route,_____ Car Initial_____ Car No._____

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Class or Rate	Check Column
	One (1) case Dry goods.			
	(Copy)			

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per_____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

~~Steinbach Bros.~~ Shipper. _____ Agent.

Per AOC Per_____

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same)

EXHIBIT A.

CONDITIONS

SEC. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

SEC. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be thrown delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

SEC. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

10 STATE OF NEW YORK,
County of New York, ss:

Edward L. Rossiter, being duly sworn, says that he is an officer of the New York Central & Hudson River R. R. Co., the defendant above named, to wit, the Treasurer thereof; that the foregoing answer is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

E. L. ROSSITER.

Sworn to before me this 18th day of April, 1913.

——— ———,
Notary Public, Westchester County.

Certificate filed in New York County.
New York County No. 63.
New York Register No. 4166.

11 *Judgment.*

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff,

against

NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO., Defendant.

The issues in the above entitled action having come on for trial before Hon. Mitchell L. Erlanger, at Trial Term, Part II of this Court, held on the 28th day of January, 1914, and the respective parties appearing by their attorneys, and the Court having heard the allegations and proofs of the parties, and after due deliberation having duly made and filed its decision on the 16th day of February, 1914, containing a statement of the facts found and the conclusions of law thereon and directing judgment for the plaintiff in the sum of $693.75, with interest from the 17th day of September, 1912, amounting to $55.63, making a total of $749.38.

Now, on motion of Goldsmith, Rosenthal, Mork & Baum, attorneys for the plaintiff, it is hereby

Adjudged that the plaintiff, Samuel Goldberg, do recover of the New York Central & Hudson River Railroad Co. the defendant, the sum of $749.38, the amount claimed and interest, and that said plaintiff have execution therefor.

WM. F. SCHNEIDER, *Clerk.*

Judgment Feb. 21, 1914.

12 *Findings of Fact and Conclusions of Law.*

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff,

against

NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO., Defendant.

The issues of fact raised by the answer of the defendant, the New York Central & Hudson River Railroad Co., coming on to be tried by the Court at a Trial Term, held by the undersigned without a jury, and having been tried on the 28th day of January, 1914, and the allegations and evidence of the parties having been heard, now after hearing Goldsmith, Rosenthal, Mork & Baum, attorneys for the plaintiff, Milton M. Goldsmith, of counsel, and Alex S. Lyman, attorney for the defendant, William Mann, of counsel, and briefs having been submitted and due deliberation having been had, I decide and find as follows:

Findings of Fact.

First. That the plaintiff is engaged in business at the City of Cincinnati, State of Ohio, under the name and style of the Maine Cloak & Suit Co.

Second. That the defendant is a common carrier of goods for hire and is a domestic corporation.

13 Third. That on the 17th day of September, 1912, at the City of New York, Steinbach Bros. & Co. delivered to the defendant a case of merchandise consisting of shawls, muffs and other dry goods.

Fourth. That the defendant received said merchandise and agreed to safely carry same and deliver same to the plaintiff in Cincinnati, Ohio.

Fifth. That the case of merchandise delivered to the defendant had the word "furs" conspicuously marked thereon.

Sixth. That the words "D. G." (meaning dry goods), marked on the bill of lading was a mere driver's mistake, and was not made with any intention to fraudulently misrepresent the nature of the merchandise shipped.

Seventh. That the said goods mentioned aforesaid, were delivered to the defendant by the firm of Steinbach Bros. & Co., for and in behalf of the plaintiff.

Eighth. That the defendant accepted the said goods on the express condition that the freight charges upon such merchandise were to be paid upon delivery of the goods to the plaintiff.

Ninth. That the defendant did not safely carry the goods and that they were stolen in transit and never delivered to the plaintiff.

Tenth. That the bill of lading contained no condition that the shipper should accurately describe the shipment, nor a notice that

the carrier would disclaim liability for loss, unless the goods were thus described.

14 Eleventh. That the defendant offered no explanation whatever as to the loss of the goods, while in the possession of the defendant.

Twelfth. That the defendant had notice of the nature of the merchandise shipped.

Conclusions of Law.

First. I find that the defendant has failed to prove any fraudulent intent on the part of the plaintiff or the consignor or the consignor's agents to misrepresent the goods shipped.

Second. I find that as the bill of lading contained no condition that the shipper should accurately describe the shipment, nor notice that the carrier would disclaim liability for loss, unless the goods were thus described that any exemption from liability did not as a matter of law follow from the error itself.

Third. I further find that the plaintiff has fully established the cause of action alleged in the complaint.

Fourth. I accordingly direct judgment for the plaintiff in the sum of Six hundred ninety-three and 75/100 ($693.75) Dollars, with interest from the 17th day of September, 1912, amounting to Fifty-five and 63/100 ($55.63) Dollars, making a total of Seven hundred forty-nine and 38/100 ($749.38) Dollars, besides the costs and disbursements of this action.

MITCHELL ERLANGER,
Justice of the Supreme Court of the State of New York.

15 *Opinion.*

GOLDBERG

v.

N. Y. C. & H. R. R. R. Co.

By Mr. Justice ERLANGER:

A case containing furs was delivered to the defendant in this City by Steinbach Bros. & Co. consigned to the plaintiff, the owner, and was lost through theft in transit. The word "furs" was conspicuously marked upon the case, but the shipment was designated in the bill of lading by the letters "D. G." signifying dry goods, such description having been given by the driver of a delivery wagon, to whom the package was entrusted by the consignor for the purpose of delivery to the defendant railroad company. The ground of defense is that because of this false description of the goods in the bill of lading the contract of carriage was avoided. There can be no doubt that the use of the designation "D. G." was due to a mistake and was not founded in artifice or fraudulent intent. The person

who made the designation acted under what he supposed were some general instructions from his immediate employer—not the consignor—and while the plaintiff is charged with such legal results as follow from the act of this individual, through whose agency the shipment was made, the facts present no possible case of deceit, either active or passive. The provisions of the Interstate Commerce Act (sec. 10 subdiv. 3) cited for the defendant, relating to misrepresentation of the contents of packages, are framed to cover cases of actual fraud involving some wrongful intent and clearly have no application to a mere error, innocently made. The question is simply whether, for a mistake of this character, the carrier was absolved from liability under its agreement to transport the
16 goods and, in my opinion, it was not. The defendant, by a condition in its bill of lading, reserved the right to collect for any difference in freight rates due to an error of description which affected the rate chargeable, and to this extent the contract between the parties recognized the fact that accuracy of description was not essential to the carrier's accepted duty to transport the goods. The agreement was to carry and deliver this particular box of goods and there is nothing in the record to suggest that the error of description as to what the box contained had anything to do with the theft of the shipment or in any way misled the defendant in the matter of the care to be exercised. In cases where it appears that a misdescription had some reasonable relation to the loss, the measure of damages would be correspondingly affected as in Stokes v. R. R. (74 Misc. R., 402), where an injury in transit to a work of art shipped among "household articles" was involved, and Maginn v. Dinsmore (62 N. Y., 35, 44), where the theft from the carrier's possession of a small but valuable package was occasioned through the shipper's failure to declare its value, and the consequent concealment of peculiar and extraordinary circumstances affecting the risk which it was his duty to disclose under a condition expressed in the bill of lading. Where the bill of lading contains the condition that the carrier shall not be responsible for loss unless the goods shipped are accurately described, the condition is enforcible unless waived (Rathbone v. R. R., 140 N. Y., 48). Speaking of shipments under such conditions, the court in the case cited, said: "In all such cases good faith on the part of the shipper is required, and his
17 silence at the time of shipment is such a fraudulent concealment from the carrier of a material fact affecting his liability as to exempt him from his obligation to transport with due care. If the carrier omitted to give notice to the shipper that he would not be responsible for loss unless the true character and value of the goods were stated, the latter might safely remain silent. He is not bound to speak unless notice of non-liability on the part of the bailee, in case he remains silent, is given". In the present case, the bill of lading contained no condition that the shipper should accurately describe the shipment nor a notice that the carrier would disclaim liability for loss unless the goods were thus described, and it is apparent that an exemption from liability, as matter of law, did

not follow from the error itself. The Rathbone case is very instructive upon this point. There the bill of lading made the furnishings of a written description of the goods a condition of the contract, and a shipment of valuable statuary was simply described in the bill as "two boxes of marble, contents and value unknown." For breakage in transit involving a substantial loss, the carrier sought to escape liability because of the absence of a true description, yet the court held that notice of the contents of the boxes, through markings upon them, and statements made to servants of the carrier, sufficed to support a case for the plaintiff. Following this authority, the case before me resolves itself into a question of fact whether the defendant accepted a shipment, truly and plainly marked "furs", with notice of what was shipped, and under an agreement to transport it. My finding is in the affirmative, and I direct judgment for the plaintiff in the sum of $693.75, with interest from September 17, 1912."

NEW YORK LAW JOURNAL,
February 13, 1914.

18

Notice.

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant.

SIRS: Please Take Notice that the defendant excepts to the findings of fact and conclusions of law in the above entitled action as follows:

I. To the findings of fact and each and every one of them contained in the paragraphs designated, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Eleventh and Twelfth, and

II. To the conclusions of law and each and every of them contained in the paragraphs designated, First, Second, Third and Fourth.

Dated, New York, February 24, 1914.

ALEXANDER S. LYMAN,
Attorney for Defendant.

Office and P. O. Address, 3516 Grand Central Terminal, New York City, N. Y.

To Goldsmith, Rosenthal, Mork & Baum, Attorneys for Plaintiff, 35 Nassau Street, New York City, N. Y.; William F. Snyder, Clerk of the Supreme Court.

19 *Case.*

New York Supreme Court, Trial Term. Part II.

SAMUEL GOLDBERG, Plaintiff,

against

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant.

Before Erlanger, J., and a Jury.

NEW YORK, January 28, 1914.

Appearances:

Messrs. Goldsmith, Rosenthal, Mork & Baum, Attorneys for Plaintiff; Mr. Goldsmith, of counsel.

Mr. Alexander S. Lyman, Attorney for Defendant; Mr. William Mann, of counsel.

A jury was duly impaneled and sworn.

It is admitted that the defendant received for transportation a case containing the goods mentioned in the complaint; that such goods were stolen while in transit and were never delivered to the consignee.

By stipulation of counsel, the jury is waived.

20 ABRAHAM S. SHIMM, called as a witness on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination by Mr. Goldsmith:

Q. Are you a member of the firm of Steinbach Brothers & Company?

A. Yes, sir.

Q. Could you tell us the merchandise that was in this case that was delivered to the defendant in this action?

A. Yes, sir.

Q. Describe what they are?

A. There was number 125——

Q. What was the character of the merchandise?

A. The character of the merchandise?

Q. Will this help you better? (Handing witness paper.)

A. Yes.

Q. What is that paper which you have in your hand—does that correctly and completely describe the contents of that case that was delivered to the defendant?

A. Yes, sir.

Mr. Goldsmith: I offer it in evidence.

Received and marked Plaintiff's Exhibit 1.

Q. And were the goods of the value and price mentioned in that statement?

A. Yes, sir.

Q. Were all of these goods that were in this case furs, or natural fur?

A. Some of them were imitations, and some was real furs.

Q. Now, the imitation furs so-called by you, what was their composition or texture?

A. I don't understand.

Q. Were they made of cloth?

A. No, it is some—yes, made out of cloth.

Q. And they are not really the pelt of any animal?

A. No.

21 Q. Now, when you put these in the case who had charge of it in your place of business?

A. I had a shipping clerk by the name of Nathan Glatman.

Q. Is he here?

A. Yes.

Q. Did you see this case before it went off?

A. Yes, sir.

Q. Did you see the markings on the case?

A. Yes, sir.

Q. What was the case marked?

Mr. Mann: Now, I object to that as irrelevant and immaterial because the description in the bill of lading which is admitted was "Dry goods" and I object to any attempt to prove any different marking on the case.

Objection overruled. Exception.

A. The Main Cloak & Suit Company, Cincinnati, Ohio; marked furs, value $750.

Q. Was that painted upon the case?

A. Yes, sir.

Q. Can you tell us approximately the size of the letters?

A. Well, the letters was not very big.

Q. Well, about, in inches?

A. Well, I should say it was about three inch letters.

Cross-examination by Mr. Mann:

Q. I show you this bill of lading and ask you if you filled that out?

A. No, sir.

Q. Do you know who did?

A. Yes, sir.

Q. Who was it?

A. The man is right here in court.

Q. What is his name?

A. His name is Augustus Smith.

22 Q. And he is employed by the plaintiff, is he?

A. No, sir.

Q. Who is he employed by?
A. He is employed by the expressman to whom we gave the case.
Q. You turned the case over to him?
A. To him.
Q. And told him to fill out the bill of lading, did you?
A. We never filled out the bill of lading, they always did it themselves.
Q. Who did?
A. The expressman.
Q. And that is the bill of lading you received from the railroad company for that case of goods, is it?
A. Yes.

Mr. Mann: I offer the bill of lading in evidence. Received and marked Defendant's Exhibit A.

Q. You understand the meaning of the words "D. G." on that bill of lading, do you?
A. If I would mark it then I would know, but I did not make out the bill of lading; I don't know what he meant by it.
Q. You do not?
A. No, sir.
Q. You don't know what the words "D. G." mean?
A. Well, if I would mark it I would know what it means; as long as he marked it, I don't know what he meant.
Q. Don't you know that "D. G." stands for "Dry Goods"?
A. "D. G." stands for dry goods, but I didn't mark that bill of lading.
Q. You don't ship anything but furs, do you?
A. No, sir.
Q. And it is customary for you describe your shipments as dry goods in the bill of lading?
A. No, sir.
23 Q. Have you ever done it before?
A. I don't think so.
Q. I show you a paper and ask you if you ever saw that paper before?
A. No, sir, I never seen that.
Q. Do you know what property was contained in those cases?
A. If they were cases shipped to that party, they were furs.
Q. Your firm does not ship any dry goods, does it?
A. No.
Q. Only furs; you are manufacturing furriers, are you not?
A. Yes.

Mr. Mann: I offer the paper in evidence.
Mr. Goldsmith: I object to it as incompetent, immaterial and irrelevant.
Mr. Mann: I offer it only for this purpose, to show that on other shipments they have described furs as dry goods.
Objection overruled. Exception.
Received and marked Defendant's Exhibit B.

Q. Was this a new or an old case in which the goods were shipped?
A. We buy it from the men that makes cases.
Q. And on what part of the case was the value and name of the consignee, and the description?
A. Right on the corner, and on the middle was marked the name where it went to, and on the side was "Via. Merchants Despatch," and then marked "Value $750" and marked "furs;" every case was marked "furs."
Q. Did you give the blank bill of lading to the truckman when you delivered the case to him?
A. No, sir, I did not.
Q. You left it to him to fill it out?
A. Yes.

24 Redirect examination by Mr. Goldsmith:

Q. You say these cases only contained furs. Do you mean by furs the pelts of animals?

Mr. Mann: I object to that as immaterial. It is conceded that if there were any furs in the case, they would take the higher classification; I object to it as immaterial and irrelevant.
Objection overruled. Exception.

A. No, sir; some of them were imitation furs.

NATHAN GLATMAN, called as a witness on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination by Mr. Goldsmith:

Q. Are you employed by Steinbach Brothers & Company?
A. I was in 1912.
Q. By whom are you employed now?
A. I am in business for myself.
Q. Do you remember this shipment of furs to the Main Cloak & Suit Company which is the subject of this suit that we are in court on today?
A. Yes, sir, I do.
Q. Did you mark the case?
A. Yes.
Q. What did you mark that case?
A. I marked it "Main Cloak & Suit Company, Cincinnati, Ohio; via M. D. Value $750 and Furs."
Q. "Via M. D.," that means Merchants Despatch?
A. Merchants Despatch.
25 Q. What did you do with that case after you so marked it?
A. I called the expressman up and told him to take the case down.
Q. Who was the expressman?
A. His name was Cohen, in the same building as we were.
Q. Is he in the employ of Steinbach Brothers & Company?
A. No, sir.

Q. Nothing whatever to do with them?
A. No, sir.

Cross-examination by Mr. Mann:

Q. Is he the expressman employed by Steinbach Brothers & Company?
A. No, sir, he is not employed by Steinbach Brothers & Company.
Q. He is the expressman that you delivered these goods to?
A. Yes.
Q. Did you ever deliver other goods to him?
A. Yes, he took all our expressage.

Redirect examination by Mr. Goldsmith:

Q. Are these bills of lading from Steinbach Brothers & Company for shipments similar to this one in suit?
A. Yes, I guess so, yes, sir.

Mr. Goldsmith: I offer them in evidence.
Received and marked Plaintiff's Exhibits 2, 3 and 4.

Q. Are these also bills of lading for similar shipments from Steinbach Brothers & Company?
A. Well, I believe these are subsequent, these two are subsequent to when I was there, because I have not been there since 1912; this is the Main Cloak & Suit Company.
Q. That is also a similar shipment?
A. Yes, sir.

Mr. Goldsmith: I offer those in evidence.
Received and marked Plaintiff's Exhibits 5, 6 and 7.

Recross-examination by Mr. Mann:

Q. Do you know who filled out this bill of lading, Defendant's Exhibit B?
A. I do not.
Q. Do you know who filled out the others, or whose writing it is (Referring to Plaintiff's Exhibits 5, 6 and 7)?
A. No, sir.
Q. Do you notice that the contents of two of the cases shown in the bills of lading, Defendant's Exhibits A and B, are described as dry goods?
A. I don't know what you mean by that question.
Q. Well, do you see that the description of the goods in that bill of lading is dry goods, isn't it?
A. I see "D. G.," yes.
Q. Well, it is not furs at any rate, is it?
A. No, not on here.
Q. Now, the other papers that I show you, do you know whose handwriting that is on that bill of lading?
A. No, sir, I don't know.

Q. Exhibit A?
A. No, sir, I don't.
Q. You were there at the time, weren't you, employed by Steinbach Brothers & Company?
A. Yes, I was employed, but I never filled out the bills of lading.
Q. Who did it?
A. Well, I suppose the expressman did; we did not, so somebody must have done it.
Q. And you left it to him to fill out the bill of lading?
A. Yes, he always took the case and gave me a receipt for it, that is all; he attended to the rest.
27 Q. Well, Steinbach Brothers & Company did not ship anything but furs, did they?
A. No, sir, they did not manufacture anything but furs.

By Mr. Goldsmith:

Q. By furs, you means furs or imitation furs don't you?

Mr. Mann: I object to that as immaterial.
Objection overruled. Exception.

A. They are called furs.
Q. They are called furs, but they are imitation, some of them?
A. They are a cheap grade of fur, as I understand it; I am not an expert on furs.

AUGUST SMITH, called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination by Mr. Goldsmith:

Q. By whom are you employed?
A. J. Cohen.
Q. What business is he in?
A. Trucking business.
Q. Were you in his employ in the month of September, 1912?
A. Yes, sir.
Q. Do you remember receiving a case of merchandise from Steinbach Brothers & Company?
A. I did not receive it, but I made the receipt out, that is all I know.
Q. I show you this paper and ask you whether that would recall to your mind the receipt of the merchandise mentioned in that paper? (Showing witness Exhibit A.)
A. Yes, sir.
28 Q. Where did you get that merchandise from? Did you get it from Steinbach Brothers & Company?
A. I don't know what was in the case.
Q. I ask you, where did you get the case from?
A. The case I got from Steinbach Brothers & Company.
Q. What did you do with it?
A. Took it over to the Merchants.

Q. You took it over to the Merchants Despatch?
A. Yes.
Q. And when you got there what did you do? Did you hand the case over to them?
A. Yes, sir.
Q. And what did they do or you do about giving a receipt?
A. Well, I had the receipt before I went away from the office.
Q. Is that the receipt?
A. Yes, sir.
Q. And was that signed over there at the Merchants Despatch?
A. Yes, sir.
Q. Who filled in that paper, Exhibit A?
A. I did.
Q. Did anyone from Steinbach Brothers Company tell you what to put in that paper?

Mr. Mann: I object to that; that is not binding on the defendant because he was their agent and that they are bound by his description and that the defendant is not.

Q. Where did you get the information from, from which you made out that paper?
A. From the case.
Q. You took the name of the party from the case?
A. Where it was going and who it was from.
Q. How about the words "D. G." on that? How did you come to make that out?
29 A. Well, that was the orders off my boss to make everything dry goods, no matter what it was, on account of we handle so much stuff, petticoats——

Mr. Mann: I object to a reason.
The Court: Yes.

Q. Does your boss do express work or trucking for other concerns, and did he at that time, other than Steinbach Brothers & Company?
A. Yes, sir, he done it for everybody.
Q. And whenever you delivered cases to the railroad company your custom was to mark them "D. G."

Mr. Mann: I object to it as immaterial.
Objection sustained.

Mr. Goldsmith: You concede that the Merchants Despatch was your agent?
Mr. Mann: We admit we got the case.
Mr. Goldsmith: Do you admit that you got it from the Merchants Despatch, which is the agent of the New York Central?
Mr. Mann: We received the case. The Merchants Despatch is only a route, that is all.
Mr. Goldsmith: I want to get that on the record.
Mr. Mann: It is a route that operates over the New York Central,

and the New York Central received that case. The Merchants Despatch means that the shipment was routed over the New York Central & Lake Shore, that is all it means.

Mr. Goldsmith: Do you concede that this case was received direct from the expressman?

30 Mr. Mann: At 33rd street, yes, we received that case.

Mr. Goldsmith: And your company's agent signed that paper, Exhibit A?

Mr. Mann: Yes, there is our stamp on it.

Cross-examination by Mr. Mann:

Q. Then you were instructed by your employer to mark the bill of lading as a case of dry goods?

A. Yes, sir.

Q. And you filled out the bill of lading yourself?

A. Yes, sir.

Q. After you received the case?

A. Yes, sir.

Q. You had been doing trucking for Steinbach Brothers & Company for some time, or your employer had? Had you received other cases from Steinbach Brothers & Company?

A. Well, I couldn't say that now; it might have been long ago, I might have received some freight from him.

Mr. Goldsmith: Will you concede on the record that the freight on this was not paid and was to be collected at the other end?

Mr. Mann: Yes.

Mr. Goldsmith: The amount is $693.75 with interest from September 17, 1912.

Plaintiff rests.

Mr. Mann: I move to dismiss on the ground that there was no agreement on the part of the defendant to transport furs, but that the agreement was to transport dry goods.

Decision reserved.

31 It is conceded by the plaintiff that at the time of the shipment of the merchandise in accordance with the official classification filed with the Interstate Commerce Commission by the defendant, it provided for a double first class rate on furs and a single first class rate on dry goods, and that the rate from New York to Cincinnati on dry goods per hundred pounds was 65 cents; that the rate on furs between New York City and Cincinnati would be $1.30 per hundred pounds.

JOSEPH M. BULGER, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Mann:

Q. Mr. Bulger, you are employed by the New York Central Railroad Company?
A. Yes, sir.
Q. At the 33rd street station?
A. Yes, sir.
Q. And were you during the year 1912?
A. Yes, sir.
Q. Do you remember the shipment shown in Defendant's Exhibit A? Are you familiar with that shipment?
A. That shipment was made at our station, yes, sir.
Q. Now, when you receive a shipment you send a way bill with the goods to destination, do you?
A. I send a way bill with the goods to the receiving agent at destination.
Q. Will you state what rate was charged for the transportation of these goods, this case of goods?

32 Mr. Goldsmith: I object to that; no rate has been charged for these goods; they were never delivered, and according to the terms of the contract, they could only be charged at destination.
Mr. Mann: I offer this to show that we acted on the description.
Mr. Goldsmith: I object unless he knows of his own knowledge how the way bill was made out.

Q. What are your duties at 33rd street?

Mr. Goldsmith: I concede he has got charge of the freight yard.
Mr. Mann: He has not.

A. I am chief bill clerk.
Q. You have charge of the billing, have you?
A. Yes.
Q. Can you state—have you examined the records there and can you state what rate was shown on the billing for this shipment?
A. Well, I could not state from my positive knowledge; to the best of my knowledge the rate would have been 65 cents a hundred, first class.

The Court: Strike out after "I could not state of my positive knowledge."

Q. Is that a copy of the way bill for that case of goods?
A. Yes, sir, that is a copy of the way bill.

Mr. Mann: I offer that in evidence.

33 By Mr. Goldsmith:

Q. That is a copy of the way bill?
A. That is a copy of the way bill made from our records.

Received and marked Defendant's Exhibit C.

Cross-examination by Mr. Goldsmith:

Q. Are you familiar with the eighth clause on the back of that contract, Exhibit A?
A. I am, yes, sir.
Q. What is that, in substance?
A. Well, in substance, that if the owner or consignee ships goods different from what they really are and they are discovered before delivery to the consignee at the other end, the destination, that he shall pay the charges on what the shipment really consists of.
Q. In other words, if there is a mis-description in the way bill from that which the goods actually are, the contract calls for the payment of the excess at the other end?
A. You could not call it a mis-description in the way bill, because the way bill is made from the shipper's receipt.
Q. Well then, call it a mis-description of the receipt.
A. It is not a mis-description of the receipt; we make an exact copy of the receipt.

By the Court:

Q. If the receipt says one thing, before the goods arrive at destination, and the carrier knows what the contents of the box really are, you have a right to charge at destination the rate fixed by the Interstate Commerce Commission?
A. Yes, sir.

34 By Mr. Goldsmith:

Q. Now, what methods have you got to determine, if any, whether the goods shipped are the goods described?

Mr. Mann: I object to that, because it is the duty of the shipper to properly describe the goods in the bill of lading, and there is no duty on the carrier to open every case to examine the goods to ascertain their character.
Objection overruled. Exception.

A. Well, we really rely upon the honesty of shippers to properly describe their goods.

Mr. Goldsmith: I move to strike that out.
The Court: Strike it out.

Q. I ask you what methods, what you do in order to determine, if anything, to ascertain if the goods described in the way bill of lading are what are shipped?
A. I have nothing to do with the receipt of it.
Q. If you know the methods, the rules or regulations?

Mr. Mann: I object to that.
The Court: Of his own personal knowledge.

A. Well, of my own personal knowledge I should say that unless there was some reason to believe that the shipper misrepresented the article, that the article would be taken as the shipment receipts read,

Of course, if there was some personal reason for us to think
35 that a shipper was making misrepresentations and was shipping a case of stone, say, and representing it as a case of furs, it would be the duty of our receiving clerk in a case of this kind to satisfy himself that the shipment was as described in the shipping receipt.

Q. Do you ever compare the way bill with what is written or printed upon the article shipped?

A. Well, the way bill is made in the office and the article shipped is on the platform.

Q. The way bill is delivered to the baggage man or the freight man, isn't it?

A. No, I beg your pardon; these papers after they are received in a freight station, are laid on what they call a veri-check system; we have a lay-out, each car bears a number, a box number, and the box number is put on the right hand corner of these receipts, like Cincinnati would be box 35; now, we may have one hundred receipts going to Cincinnati in a day, and all of those are in box 35, and there is a chart made with all those numbers on, opposite the numbers showing the car number, the initials, and the destination of that box. These receipts are sent up to the office to the bill clerks and they take these receipts, take the number in the right hand corner showing that 35 is a Cincinnati car, and insert that number in the space provided in the way bill for the car number, and they then go ahead and bill in accordance with the receipt. After they are finished with the receipt, it is put on file, and after the day's business is through, these are filed away for future reference.

Q. But isn't the man in charge of the car also furnished with a list of the articles in the car, the name of the consignee, and the
36 character of the article?

A. I don't know what you mean by the main in charge in the car.

Q. Do you mean to say that you load your cars and have nobody in charge of them?

A. Our cars are loaded in this way: The freight is taken off—the truckman who delivers it on the platform, it is taken off the platform by men and put on a hand-truck and it is taken over to a scale and weighed; there is a weigh-master at the scale which has what we call a vericheck, on which he stamps the number of the box car in which this case is to go, and he hands that check to the checker, and the checker takes the case on his truck to where that car is located, and hands it to the stevedores, and it is the stevedore's duty to see that the case is deposited in the proper car. The stevedore does not know what is in the case, but it is his duty to see that the destination is the destination of the car.

Q. How many men handle the merchandise from the time it is received at 33rd street at the Merchants Despatch until it is put on the car?

A. When it is received, the truckman hands it to the receiving clerk and the receiving clerk satisfies himself that the freight is on

the platform, and then he puts this red stamp on it and signs it, this is the original, and he signs the duplicate.

Q. I ask you how many people?

A. Let me tell you, I will tell you. Three people, before it reaches the office.

Q. And those people have both the way bill or the receipt, and charge of the case?

A. Well now, what do you mean by that, the receipt and charge of the case.

37 Q. Oh, they have got the case in their possession from which they can see what marks are on it?

A. The man at the scale his duty is to put the box number on and see that it is loaded in the proper car.

Q. I want to know how many employes of the defendant had the opportunity to have in their possession either the way bill or the receipt and at the same time the opportunity to examine any marks visible on the case?

Mr. Mann: I object to that question as argumentative.

Objection sustained. Exception.

Mr. Goldsmith: It is understood that the back of this paper is also a part of the exhibit.

The Court: The whole paper is in as Exhibit A, both the face of the exhibit as well as everything printed on the back.

Redirect examination by Mr. Mann:

Q. When you bill a case of goods, you don't have the case before you, do you?

A. No, sir.

Q. You are upstairs and the case is downstairs in the building or in the car?

A. Yes, sir.

Q. After that case is delivered and the receiving clerk signs the bill of lading of which Defendant's Exhibit A is a copy, he returns that to the shipper, doesn't he?

A. Yes.

Q. That goes back to the shipper?

A. Yes.

Q. And you keep a duplicate of that?

A. Yes, sir.

Q. And that goes up to your office, the billing room?

A. Yes.

Q. And then you fix the rate there?

A. Yes.

38 Q. From the description generally on the bill of lading and the duplicate copy of it?

A. From the description shown on the face of the shipping receipt.

Q. And you rely entirely on the description given in the bill of lading?

Mr. Goldsmith: Objected to as incompetent and calling for a conclusion.

Objection sustained. Exception.

Q. Do you rely on the description in the bill of lading in fixing the rate for the goods?

A. Yes, sir, that is all we have to rely on.

Q. You don't have the case before you?

A. No, we never see the packages.

Mr. Goldsmith: I would like to offer in evidence such rules and regulations of the Interstate Commerce Commission as are or may be pertinent to the controversy in this case.

Mr. Mann: I want to know what they are.

The Court: Offer the whole rules in evidence.

Mr. Mann: I offer in evidence copy of Official Classification number 38, filed with the Interstate Commerce Commission and in effect on the date this shipment was received, together with the rules and regulations contained therein, it being understood that only so much thereof as is pertinent to the case is to be deemed part of the record, and either side can refer to any part of it which they claim material.

Received and marked Defendant's Exhibit D.

Defendant Rests.

Case Closed.

39 Mr. Mann: I move now to dismiss the complaint on the ground that the evidence shows that the property was described as dry goods when it actually consisted of furs, and that the classification and tariff filed with the Interstate Commerce Commission show that if it had been described as furs instead of dry goods, the rate charged would have been double the rate which was actually charged for the transportation of it.

Decision reserved.

Mr. Goldsmith: I move for judgment for the plaintiff.

Decision reserved.

Briefs to be submitted as follows: On Monday, February 2nd, defendant to serve copy of brief on plaintiff's attorney, and plaintiff's attorney will serve copy of his reply brief on defendant's attorney by Wednesday, February 4th and final submission to take place on Thursday, February 5th.

(Here follow fac-simile invoices marked pages 40 to 49.)

NEW YORK Sept. 16 1912

M. Mann Sloan & Pratt Co
Cincinnati O

BOUGHT OF **STEINBACH BROS. & CO.**
MANUFACTURING FURRIERS
155-165 WEST 25th STREET

TERMS — BILLS NOT PAID WHEN DUE ARE NOT SUBJECT TO DISCOUNT

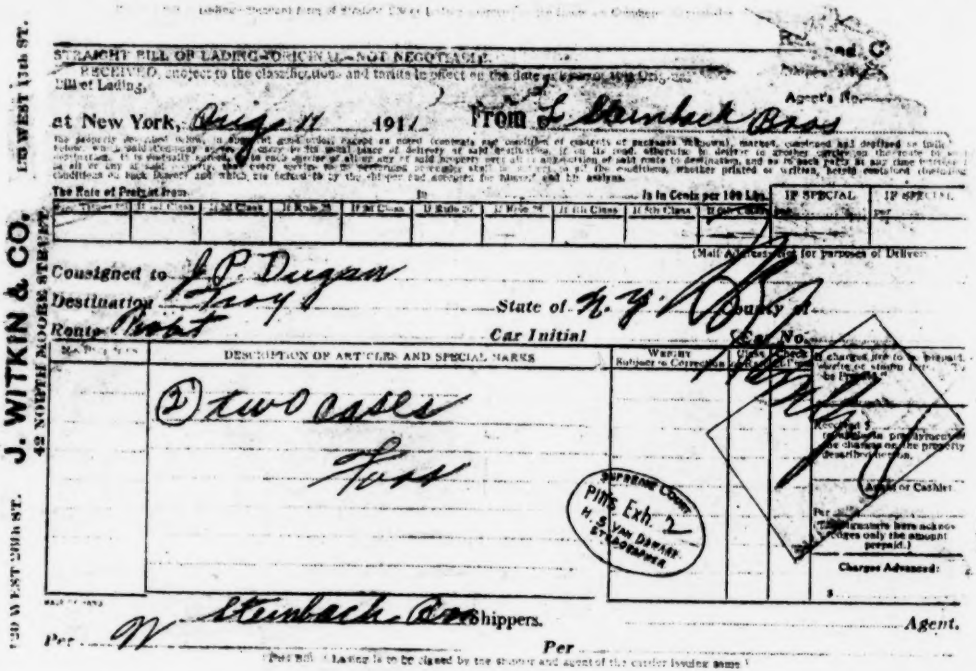
24	120	Reto Skins	@ 5.	120	00
12	120	muff "	" 2.50	30	00
4	200/201	Ret Coffin	" 7.50	30	00
7	307	muff "	" 5.	35	00
6	151	" Marmot	" 3.75	22	50
2	162	" "	" 4.75	9	50
6	157/162	" "	" 10.00	60	00
3	336/1107	Ret "	" 12.00	36	00
1	1127	Plain "		4	50
2	155	" "	" 4.75	9	50
15	110	muff Coney	" 1.75	26	25
6	112	" "	" 3.50	21	00
4	104	Ret "	" 2.75	11	00
5	118	Ret "	" 6.75	33	50
2	115	Ret "	" 2.75	5	50
2	101	" "	" 3.75	7	50
6	105	" "	" 2.75	16	50
4	400/401	Q.C. Red Fox	" 16.00	64	00
2	311/312	Natural muff	" 13.00	25	00
2	301/302	Blue "	" 13.50	27	00
2	376	Beret Fox	" 8.50	17	00
1	306/312	Ret Nat.		20	00
1	342	" Fox		10	00
1	1126/1130	" Red Fox		35	00
6	120	Coney muff C	" 2.75	16	50
				643	75

Above is steinsight bill of quantities shipped, Nothing else received.

per H. Steinbach

41

Plaintiff's Exhibit 2.



J. WITKIN & CO.
42 NORTH MOORE STREET
120 WEST 29th ST.
120 WEST 13th ST.

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Bill of Lading,

at New York, Aug 11 1917 From L. Steinbach Bros

Agent's No.

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under this contract) agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including the conditions on back hereof) which shall be binding upon the shipper and all parties interested in said property, as far as any of said conditions may be applicable.

The Rate of Freight from ... to ... is in Cents per 100 Lbs.

1st Class	2d Class	3d Class	4th Class	5th Class	6th Class	7th Class	8th Class	9th Class	Rate Class	IF SPECIAL	IF SPECIAL

(Mail Address to be given for purposes of Delivery)

Consigned to L. P. Dugan

Destination Troy

State of N. Y. County of

Route Boat

Car Initial Car No.

Marks	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Class or Check	Advanced charges to be prepaid. Weight, charges and claims to be settled and paid by
	(2) two cases Toys			

SUPREME COURT Pltffs. Exh. 2 H. S. VAN DAMME, STENOGRAPHER

Agent or Cashier

Per (The signatures here acknowledge only the amount prepaid.)

Charges Advanced: $

Per L. Steinbach Bros Shippers.

Per Agent.

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

CONDITIONS

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its p. .ion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona-fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any document, specie, or for any articles of extraordinary value not specifically rated in the public bed classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are other than those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

"If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading."

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

42

Plaintiff's Exhibit 3.

J. WITKIN & CO.
43 NORTH MOORE STREET
125 WEST 17th ST.
WEST 29th ST.

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

at New York, Aug 14 1911 from B. Hoey Cross Agent

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from _____ to _____ is _____ Cents per 100 Lbs.

If Rate 1st Class	If 1st Class	If 2d Class	If Rate 2d	If 3d Class	If Rate 3d	If 4th Class	If 5th Class	If 6th Class	IF SPECIAL per	IF per

Consigned to Adolph Hoey

Destination Kalamazoo State of Mich County of

Route M D Car Initial Car No.

Mail Address—Not for purposes of Delivery

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)
	One case Furs	

MADE BY HAND

N.Y.C. & H.R.R.R.CO. RECEIVED AUG 14 1911 EXPRESS TRAFFIC

3

If the rates are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced $ _____

Per B. Hoey Cross Shippers.

Per _____ Agent.

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

CONDITIONS

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. Where in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

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Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona-fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to, and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If, upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

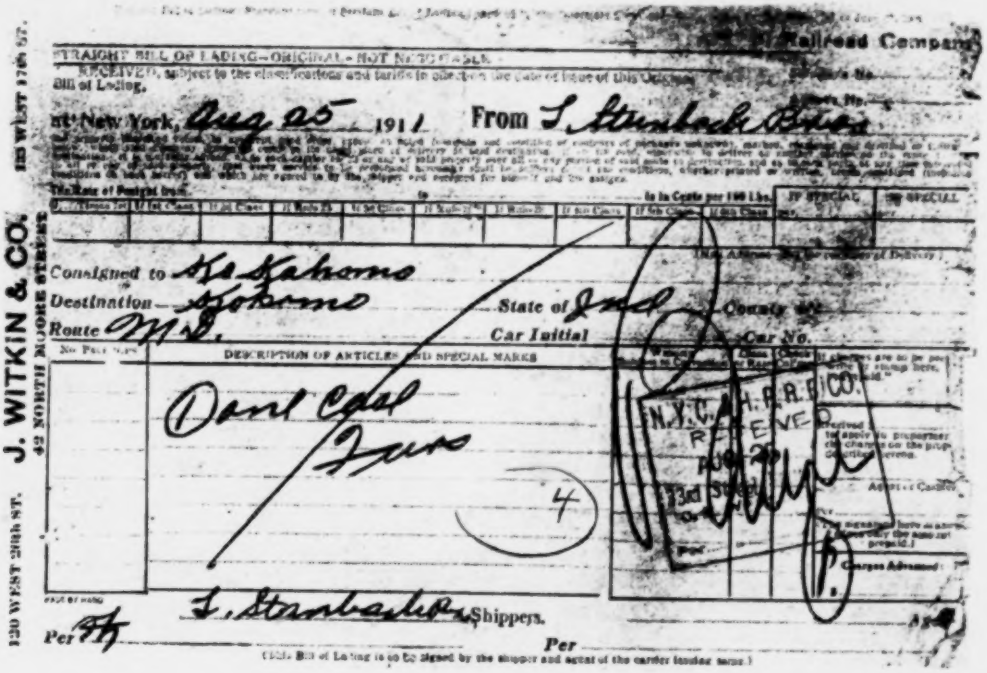
Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that the carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Plaintiff's Exhibit 4.



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Form P. T. D N

NEW YORK CENTRAL LINES

New York Central & Hudson River Railroad Company

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

Shippers No. 1

Agents No. 15

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at [illegible] 19

from Heintzbach Bros the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from ____

to ____ is in Cents per 100 lbs.

If Times 1st	If 1st Class	If 2d Class	If Rate 3c	If 3d Class	If Rate 3½	If Rate 3½	If 4th Class	If 5th Class	If 6th Class	If Special rate	If Special per

(Final Address—Not for purposes of Delivery)

Consigned to The Main C. & S. Co 5

Destination ____ State of ____ County of ____

Route, Cincinnati Car Initial Ohio Car No. ____

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Class or Rate	Check Column
2	Two Cases Clothing			

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ ____ to apply in prepayment of the charges on the property described hereon.

N.Y.C. & H.R.R.R.CO. RECEIVED SEP. 19 1913

Agent or Cashier.

Per ____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$ ____

Per S Bros Shipper.

Per ____ Agent

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same)

CONDITIONS

SEC. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

SEC. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

SEC. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

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Form F. T. D 24

NEW YORK CENTRAL LINES

New York Central & Hudson River Railroad Company

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

Shippers No._____

Agents No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at _____ 8/23 19 13

from Steinbach Bros & Co the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from _____

to _____ is in Cents per 100 lbs.

If ___ Times 1st	If 1st Class	If 2d Class	If Rate 25	If 3d Class	If Rate 20	If Class 15	If 4th Class	If 5th Class	If 6th Class	If Special per	If Special per

(Mail Address—Not for purposes of Delivery)

Consigned to J. J. Meguran

Destination, Santa Barbara State of Calif County of _____

Route, _____ Car Initial _____ Car No. _____

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Class or Rate	Check Column
1	Case of Tea (one)			

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

N.Y.C. & H.R.R.R.CO. RECEIVED AUG 23 1913

Shipper. _____ Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same)

CONDITIONS

SEC. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

SEC. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

SEC. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

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Form P. T. D 36

NEW YORK CENTRAL LINES

New York Central & Hudson River Railroad Company

Shipper's No.

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading

at Steubach Ind 8/30/13

from ..... (the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from .....

to ..... is in Cents per 100 lbs.

If ..... Times 1st	If 1st Class	If 2d Class	If Rate 30	If 3d Class	If Rate 20	If Rate 15	If 4th Class	If 5th Class	If 6th Class	If Special per	If Special per .....

Consigned to C W Sales Co (Mail Address—Not for purpose of Delivery)

Destination ..... State of ..... County of .....

Route Anderson Ind Car Initial ..... Car No. .....

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Class or Rate	Check Column
One	Case Furs			

N.Y.C. & H.R.R.R.CO. RECEIVED AUG. 30. 1913

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ ..... to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$ .....

S Bros Shipper

Per .....

Agent

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same)

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CONDITIONS

SEC. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

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SEC. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

SEC. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

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VERTICAL IN BOOK

FORM 66 C.H.S

WEST SHORE RAILROAD.

(N. Y. C. & H. R. R. R. CO., Lessee.)

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.

Shippers No._____

Agents No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at _____ 9/17 191 2

from Steinbach Bros Co 154 & 56 E 15 the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Three 1st	If 1st Class	If 2d Class	If Rule 25	If 3d Class	If Rule 26	If Rule 36	If 4th Class	If 5th Class	If 6th Class	If Special per_____	If Special per_____

Consigned to The Main Cloak & Suit Co (Mail Address—Not for purposes of Delivery.)

Destination, Cincinnati State of Ohio County of

Route, _____ Car Initial _____ Car No.

Delft Exhibit U.S. Vos System Investigation

RD. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	One (1) Case P. G.	W	-549827	

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $_____ to apply in prepayment of the charges on the property described hereon.

N.Y.C.&H.R.R.R. CO. RECEIVED SEP 17 1912

Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

Steinbach Bros Shipper. _____ Agent.

Per _____ Per _____

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

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Uniform Bill of Lading—Standard form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

Railroad Company. Shippers No.

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE. Agents No.

RECEIVED, subject to the classification and tariffs in effect on the date of issue of this Original Bill of Lading.

at 19/2 from Steinberg Bros 159 W 25 St

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from to is in Cents per 100 Lbs.

If... Times 1st	If 1st Class	If 2d Class	If Rule 25	If 3d Class	If Rule 26	If Rule 28	If 4th Class	If 5th Class	If 6th Class	If Special per...	If Special per...

Consigned to Henry Mataya Corp Mail Address—Not for purposes of Delivery.

Destination Utica N Y State of N Y County of

Route W S R R Via Initial Car No.

Deits Exh. B

NO. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT Subject to Correction	CLASS OR RATE	CHECK COLUMN
Full	(3) cases Dry Goods Steinberg Bros			

If charges are to be prepaid, write or stamp here, "To be prepaid."

Received $ in payment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

WEST SHORE STREET STATION JUN 3 A.M.

Shipper. Per Agent. Per

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

THIS PAGE BOUND VERTICAL IN BOOK

Defendant's Exhibit B.

CONDITIONS

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by special agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona-fide invoice price, if any, to the consignor, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to the carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lengthening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, $harves, or landings shall be at owner's risk until the cars are attached to, and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any document, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If, upon inspection, it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or to lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

"If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading."

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

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50 & 51 DEFENDANT'S EX. D.

Is a copy of Official Classification No. 38, certified by the Interstate Commerce Commission, March 1st, 1912, in effect September 17, 1912, containing the classifications of freight in force at the time, and the Rules and Regulations in connection with the receipt of property by the defendant. The said Classifications, on page 88 thereof, provides for a first-class rate on dry goods, and on page 124 thereof for a double first-class rate on furs.

Defendant's Exhibit D stipulated to be produced on the argument.

The foregoing case contains all the evidence and testimony offered and given upon the trial of this action.

52 *Stipulation Settling Case.*

It is hereby stipulated that the foregoing case contains all the evidence given upon the trial of this action and that the same be settled and ordered to be filed and annexed to the judgment roll herein.

Dated, New York, April 16, 1914.

GOLDSMITH, ROSENTHAL, MORK & BAUM,
Attorneys for Plaintiff.

ALEX. S. LYMAN,
Attorney for Defendant.

Order Settling Case.

On the above stipulation the foregoing case on appeal containing all the evidence, is hereby settled and ordered on file.

Dated, New York, April 17, 1914.

MITCHELL ERLANGER, *J. S. C.*

53 *Stipulation Waiving Certification.*

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the judgment roll and the case and exceptions as settled, and the whole thereof, now on file in the office of the Clerk of the County of New York; the certification thereof by the clerk of said county, pursuant to Section 1353 is hereby waived.

Dated, New York, April 16, 1914.

GOLDSMITH, ROSENTHAL, MORK & BAUM,
Attorneys for Plaintiff.

ALEX. S. LYMAN,
Attorney for Defendant.

Order Filing Record in Appellate Division.

Pursuant to Section 1353 of the Code of Civil Procedure it is

Ordered, that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the First Judicial Department.

Dated, New York, April 17, 1914.

MITCHELL ERLANGER, *J. S. C.*

54 *Order of Affirmance on Appeal from Judgment Entered on Decision of the Court or on Report of Referee.*

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 6th day of November, 1914.

Present:

Hon. George L. Ingraham, Presiding Justice.
" John Proctor Clarke,
" Francis M. Scott,
" Victor J. Dowling,
" Henry D. Hotchkiss, Justices.

SAMUEL GOLDBERG, Resp't,

vs.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, App'l't.

An appeal having been taken to this Court by the defendant from a judgment of the Supreme Court entered on the 21st day of February, 1914, and the said appeal having been argued by Mr. William Mann of counsel for the appellant, and by Mr. Milton M. Goldsmith of counsel for the respondent; and due deliberation having been had thereon, it is unanimously ordered and adjudged that the judgment so appealed from be and the same is hereby, in all things, affirmed, and that the respondent recover of the appellant the costs of this appeal.

55 *Judgment of Affirmance.*

Supreme Court, Appellate Division, First Department.

SAMUEL GOLDBERG, Plaintiff-Respondent,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant-Appellant.

The defendant having appealed from the judgment entered herein on the 21st day of February, 1914, in favor of the plaintiff, in the sum of Seven hundred forty-nine and 38/100 ($749.38) Dollars, to the Appellate Division of the Supreme Court, for the First Judicial Department and the said appeal having been duly heard and said Appellate Division having unanimously ordered that the judgment so appealed from be affirmed in all things as hereinafter directed with the costs and disbursements of said appeal to said plaintiff-respondent, and said costs having been duly taxed at the sum of $87.94 Dollars, upon due notice.

Now, on motion of Goldsmith, Rosenthal, Mork & Baum, attorneys for the plaintiff respondent herein, it is unanimously

Ordered and Adjudged, that said judgment so appealed from be and the same is hereby in all things affirmed with costs to the plaintiff-respondent against the defendant-appellant in the sum of $87.94 for costs and disbursements.

Dated, New York, November 12th, 1914.

WILLIAM F. SCHNEIDER, *Clerk.*

56 *Notice of Appeal to the Court of Appeals.*

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff-Respondent,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant-Appellant.

SIRS: Please take notice that The New York Central & Hudson River Railroad Company, Defendant-Appellant, in the above entitled action, hereby appeals to the Court of Appeals of the State of New York from the judgment of affirmance with $87.94 costs entered upon an order of the Appellate Division of the Supreme Court for the First Judicial Department in the office of the Clerk of the County of New York on the 12th day of November, 1914, which said judgment affirmed a judgment herein in favor of the plaintiff, entered in the office of the Clerk of the County of New York on the 21st day

of February, 1914, in favor of the plaintiff and against the
57 defendant for the sum of $749.38, and from each and every part of said judgment of affirmance.

Dated, New York, N. Y., November 16, 1914.

Yours, etc.,

ALEX. S. LYMAN,
Attorney for Defendant-Appellant.

Office & P. O. Address, 3516 Grand Central Terminal, New York City.

To Goldsmith, Rosenthal, Mork & Baum, Esqs., Office & P. O. Address, 35 Nassau St., N. Y. City; William F. Schneider, Esq., Clerk of the Supreme Court, New York County.

58 *Opinion.*

Supreme Court, Appellate Division, First Department, October, 1914.

George L. Ingraham, P. J.
John Proctor Clarke,
Francis M. Scott,
Victor J. Dowling,
Henry D. Hotchkiss, JJ.

No. 6300.

SAMUEL GOLDBERG, Respondent,

vs.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Appellant.

Appeal from Judgment After a Trial by the Court Without a Jury.

William Mann, for appellant.
Milton M. Goldsmith, for respondent.

SCOTT, *J.:*

The action is for the value of goods lost in transit. Plaintiff is a fur manufacturer. On September 17, 1912, he delivered to defendant for transportation to Cincinnati, a case containing furs of the value of $693.75.

There was evidence, which in the nature of things could not be contradicted and which the trial Judge believed, that when the case left plaintiff's possession it was marked with the name and
59 address of the consignee and with the word "furs" conspicuously displayed. The case was delivered by plaintiff to a local expressman, whose driver actually delivered the case to defend-

ant, and who made out the bill of lading, which defendant signed, and upon which the action depends. This bill of lading describes the goods as "One case D. G.," which it is conceded means "dry goods." Defendant's clerk, who signed the bill of lading, relied entirely upon the representations made by the driver as to the contents of the case; never saw the case itself, and so far as appears, no representative of defendant ever compared or had an opportunity to compare the bill of lading with the marks on the case.

The complaint alleges that defendant's contract of carriage was: "in consideration of a reasonable compensation then agreed to be paid to it by the plaintiff, and which compensation was the usual freight rate for dry goods between New York City and Cincinnati, the defendant agreed" safely to carry and deliver the goods. It is conceded that at the time of the shipment the official freight classification filed with the Interstate Commerce Commission provided for a first-class rate for dry goods and a double first-class rate for furs, to wit, sixty-five cents, and one dollar and thirty cents per hundred pounds, respectively. As a result of the misdescription in the bill of lading of the contents of the case, the plaintiff was charged and agreed to pay the smaller rate applicable to dry goods, instead of the higher rate applicable to furs. Although it is conceded that the plaintiff is chargeable with the act of the express driver in misdescribing the contents of the case, the Court has found, and for the purpose of this appeal we must accept his finding, that such misdescription was the driver's mistake and not made with any
60 intention to fraudulently misrepresent the nature of the merchandise shipped. The defendant relies upon a line of cases in the United States Supreme Court and elsewhere, wherein it has been held that a false statement as to value, by which a lower rate is paid or agreed to be paid than would be charged if the true value of the goods was stated, limits the liability of the common carrier to the value stated.

These cases do not, however, go to the extent of relieving the carrier from all liability in case of such a misrepresentation, and of such limitation of liability, Judge Lurton, speaking for the United States Supreme Court, says in Adams Express Co. v. Croninger (226 U. S., 511-512): "But such a contract as we are considering in this case is not an exemption from liability for negligence in the management of property, within the meaning of the statute. It is a contract as to what the property is, in reference to its value. The purpose of it is not to change the nature of the undertaking of the common carrier, or limit his obligation in the care and management of that which is entrusted to him. It is to describe and define the subject matter of the contract, so far as the parties care to define it, for the purpose of showing of what value that is which comes into the carrier's possession, and for which he must account in the performance of his duty as a carrier. It is not in any proper sense a contract exempting him from liability for the loss, damage or injury to the property, as the shipper describes it in stating its value for the purpose of determining for what the carrier shall be accountable upon his

undertaking, and what price the shipper shall pay for the service and for the risk of loss which the carrier assumes."

61 I do not think those cases are applicable. There was here no misstatement of value, but merely a non-fraudulent misstatement of the kind of goods shipped.

I find nothing in the statute or decisions, and there is no specific clause in the bill of lading (as there is as to value), exempting the carrier or limiting his liability in case of such a misdescription as the present. The Company undoubtedly had the right to collect the excess freight when it discovered the mistake, and the shipper is criminally liable under Section 10, paragraph 3, of the Interstate Commerce Act, if he "knowingly and wilfully" misrepresents the contents of the package. But I can see no ground on the facts of this case upon which defendant can escape liability altogether.

The judgment appealed from should be affirmed with costs.

All concur.

62 *Stipulation in Court of Appeals.*

Supreme Court, Appellate Division, First Department.

SAMUEL GOLDBERG, Plaintiff-Respondent,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant-Appellant.

It is hereby stipulated by and between the attorneys for the respective parties hereto, under Section 3301 of the Code of Civil Procedure, that the foregoing are true copies of the judgment roll, papers, notice of appeal to the Appellate Division of the Supreme Court, case and exceptions, order of affirmance of the Appellate Division, and of the judgment entered thereon, and of the notice of appeal to the Court of Appeals, on file in the office of the Clerk of the County of New York, and certification thereof as required by Section 1353 of the Code of Civil Procedure is hereby waived.

Dated New York, February 17, 1915.

GOLDSMITH, ROSENTHAL, MORK & BAUM, *Attorneys for Respondent.*
ALEX. S. LYMAN,
Attorney for Appellant.

Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the Court of Appeals, Held at Court of Appeals Hall, in the City of Albany, on the 25" day of May, in the year of our Lord one thousand nine hundred and seventeen, before the Judges of said Court.

Witness, The Hon. Frank H. Hiscock, Chief Judge, presiding.

R. M. BARBER, *Clerk.*

Remittitur May 26, 1917.

SAMUEL GOLDBERG, Respondent,

ag'st

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Appellant.

Be it remembered, That on the 27" day of February in the year of our Lord one thousand nine hundred and fifteen The New York Central & Hudson River Railroad Company the appellant in this action, came here into the Court of Appeals, by Alex. S. Lyman its attorney, and filed in the said Court a Notice of Appeal and return thereto from the Judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Samuel Goldberg the respondent in said action, afterward appeared in said Court of Appeals by Goldsmith, Rosenthal, Mork & Baum, his attorneys.

Which said Notice of Appeal and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. William Mann of counsel for the appellant, papers having been submitted by counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from in this action, be in all things Affirmed. And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this Court.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be in all things Affirmed with costs as aforesaid, and stand in full force, strength and effect.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals, remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and

provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, etc.

R. M. BARBER,
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office.

MAY 26, 1917.

I Hereby Certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.] R. M. BARBER, *Clerk.*

At a Special Term of the Supreme Court of the State of New York, Part II thereof, held in and for the County of New York at the County Court-house thereof, in the Borough of Manhattan, City of New York, on the 29th day of May, 1917.

Present: Hon. Nathan Bijur, Justice.

SAMUEL GOLDBERG, Plaintiff-Respondent,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant-Appellant.

The above named defendant having appealed to the Court of Appeals of the State of New York from the final judgment entered and filed in the office of the Clerk of the County of New York on the 12th day of November, 1914, whereby it was adjudged that the Judgment entered in this action on the 21st day of February, 1914, in favor of the plaintiff in the sum of $749.38 be affirmed, and further adjudged that the plaintiff recover of the defendant the sum of $87.94 costs, and the said appeal having been duly argued at the Court of Appeals and after due deliberation the Court of Appeals having ordered and adjudged that the said Judgment so appealed from as aforesaid be affirmed with costs, and having further ordered and adjudged that the proceedings therein be remitted to the Supreme Court, there to be proceeded upon according to law:

Now on reading and filing the remittitur from the Court of Appeals herein and upon motion of Goldsmith, Rosenthal, Mork & Baum, attorneys for the plaintiff, it is

Ordered that the said order and judgment of the Court of Appeals be, and the same hereby are made the order and judgment of this Court.

Enter.

N. B., *J. S. C.*

Supreme Court, New York County.

SAMUEL GOLDBERG, Plaintiff-Respondent,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY,

Defendant-Appellant.

A Judgment in this action in favor of the plaintiff and against the defendant having been duly rendered in this Court on the 21st day of February, 1914, for the sum of $749.38, and the defendant having appealed from said Judgment to the Appellate Division of this Court for the First Department, and the said Judgment having been affirmed in all things by this Court at said Appellate Division and Judgment of Affirmance having been rendered thereon the 12th day of November, 1914, and that the plaintiff recover against the defendant $87.94 costs of said appeal, and the defendant having appealed therefrom to the Court of Appeals, and the said Court of Appeals having sent hither its remittitur, filed herein the 29th day of May, 1917, by which it appears that the said Court of Appeals has affirmed the said Judgment in all things with costs, and has given Judgment accordingly and has remitted the Judgment of said Court of Appeals to this Court to be enforced according to law, and this court having by an order duly entered herein the 29th day of May, 1917, ordered that said Judgment be made the Judgment of this Court, and the plaintiff's costs having been duly taxed at the sum of $130.92,

Now on motion of Goldsmith, Rosenthal, Mork & Baum, attorneys for the plaintiff-respondent herein, it is unanimously

Ordered and adjudged that said Judgment and order so appealed from be, and the same hereby is in all things affirmed with costs to the plaintiff-respondent against the defendant-appellant in the sum of $130.92.

Dated, New York, June 1st, 1917.

WILLIAM F. SCHNEIDER,
Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Being informed that there is now pending before you a suit in which Samuel Goldberg is plaintiff, and The New York Central & Hudson River Railroad Company is appellee, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States,

Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause,

so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 25th day of October, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

71 [Endorsed:] File No. 26,113. Supreme Court of the United States, No. 646, October Term, 1917. The New York Central Railroad Company vs. Samuel Goldberg. Received Jan. 30, 1918. Writ of Certiorari. Law Register N. Y. C. R. R. Co. and Leased Lines, No. 24, p. 263.

72 STATE OF NEW YORK,
County of New York,
Clerk's Office of the Supreme Court of the
State of New York for the County of New York, ss:

I, William F. Schneider, Clerk of the County of New York and of the Supreme Court of the State of New York for the said County of New York, by virtue of the annexed Writ of Certiorari which was served upon me on the 30th day of January 1918, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 70 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the suit of Samuel Goldberg, Plaintiff-Respondent, against The New York Central and Hudson River Railroad Company, Defendant-Appellant, mentioned in said Writ of Certiorari, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed and have hereunto set my hand, at my office in the City and County of New York, the 2nd day of February, 1918.

Fee $10.50 pd.

[Seal New York.]

WM. F. SCHNEIDER, *Clerk.*

73 [Endorsed:] File No. 26,113. Supreme Court U. S., October term, 1917. Term No. 646. The New York Central Railroad Company, Petitioner, vs. Samuel Goldberg. Writ of certiorari and return. Filed February 6, 1918.

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TO THE

Supreme Court of the United States

THE NEW YORK CENTRAL RAILROAD COMPANY,
Petitioner,

against

SAMUEL GOLDBERG,
Respondent.

Your petitioner respectfully shows:

1. Your petitioner is a railroad corporation, incorporated under the laws of the states of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, formed by the consolidation, as of December 23rd, 1914, of the New York Central & Hudson River Railroad Company and other railroad corporations and as such is the successor, in interest, of the New York Central & Hudson River Railroad Company, and is a common carrier engaged in intra-state and inter-state transportation of persons and property for hire.

2. On the 31st day of March, 1913, Samuel Goldberg, the respondent herein, commenced an action in the Supreme Court of the State of New York, New York County, against the New York Central & Hudson River Railroad Co., your petitioner's predecessor in interest herein.

3. In the complaint in that action it is alleged that "on or about the 17th day of September, 1912, at the City of New York, in consideration of a reasonable compensation then agreed to be paid to it by the plaintiff, and which compensation was the usual freight rate for dry goods, between New York City and Cin-

cinnati, the defendant agreed to safely carry to Cincinnati, Ohio," certain property of the plaintiff and that defendant negligently lost or permitted same to be stolen while in transit (fols. 13-18).

4. In its answer in that action the defendant alleged that if it received the property referred to in the complaint, the said property was received for transportation pursuant to the provisions of a bill of lading in which said property was described as a case of dry goods. That the tariffs and classifications of the defendant, duly posted, published and filed with the Interstate Commerce Commission and in effect on the date said property was received, provided for a first-class rate of 65c per hundred weight for the transportation of dry goods from New York City to Cincinnati, Ohio, and a double first-class rate of $1.30 per hundred weight for the transportation of furs between said points. That defendant relied upon the description of the property contained in the bill of lading and agreed to transport it at the rate provided in its said tariffs and classifications for the transportation of dry goods. That said property was stolen in transit and thereafter the shipper presented a claim to the defendant for the loss of furs. That defendant did not know that the case contained furs when it received same and did not learn that the contents of the case consisted of furs until after the property was stolen (fols. 22-27).

5. The action was tried by the court without a jury on January 28th, 1914 (fols. 55-57).

6. The bill of lading which the defendant issued for the transportation of the property in question contained the following description "one (1) case D. G." meaning dry goods. This description of the contents of the case was inserted in the bill of lading by August Smith, an express driver employed by J. Cohan who did all of the trucking business for Messrs. Steinbach Bros., the shippers of the property and who testified

that he had instructions from his employer to describe all property which he received from that firm as "dry goods" (fols. 81-90—Defendant's Exhibit "A", p.,47).

7. Abraham S. Shimm, a member of the firm of Steinbach Bros., testified that the contents of the case consisted of furs of the kind and value shown in copy of invoice from Steinbach Bros., to the consignee, the total value of the invoice being $693.75 (fols. 58-60—Plaintiff's Exhibit 1, p. 40). Steinbach Bros. are manufacturing furriers and ship no dry goods (fols. 66-67). On June 1, 1912, three other cases of furs, which were described by them in the bill of lading as "dry goods" were delivered to the defendant for transportation (fols. 67-69—Defendant's Exhibit "B", p. 48).

8. Over defendant's objection and exception, plaintiffs were permitted to introduce evidence of members of the firm of Steinbach Bros. that the words "furs, value $750.00" were marked on the corner of the case in addition to the name and address of the consignee which was marked on the center of the case (fols. 61-63 and 69).

9. The billing clerk employed by defendant at its station at 33rd Street, New York City, where the case of goods was received, did not see the case itself and relied upon the description of the contents thereof in the bill of lading. The case was billed as a case of dry goods and at the rate provided in the defendant's filed schedules for the transportation of dry goods, viz., 65c per hundred weight. It is not usual or customary to inspect the contents of cases of goods to ascertain whether they correspond with the description in the bill of lading unless there is some reason to believe that the shipper is misrepresenting the character of his property and no inspection of the contents of this case was made by defendant's billing clerk (fols. 92-114—Defendant's Exhibit "C", p. 49).

10. On the date the defendant received this case of goods the tariffs and classifications which it had filed with the Interstate Commerce Commission, provided for first-class rate of 65c per hundred weight for the transportation of dry goods between New York City and Cincinnati, Ohio and double first-class rate of $1.30 per hundred weight for the transportation of furs between the said points (fols. 90-91).

11. Defendant conceded that the property was not delivered to the consignee (fols. 56-57).

12. Defendant moved to dismiss the complaint at the close of plaintiff's case and also at the close of the entire case on the ground that the property was described as "dry goods" and the rate charged for its transportaion was the established rate for the transportation of dry goods and that a different and higher rate would have been charged under the filed tariffs if it had been described as "furs" (fols. 90-91 & 115-116).

13. The Trial Justice held that the plaintiff was charged with such legal results as followed from the act of the express driver in describing the property as "dry goods" but found that such false description was due to a mistake and not to fraudulent intent on the part of the shipper and for that reason and because there was no provision in the bill of lading that the defendant should not be responsible, if the goods received were not of the character therein described and because the case was marked "furs" directed a judgment for the plaintiff (fols. 43-51).

14. The judgment of the Trial Court was affirmed by the Appellate Division. In the opinion of that court it held that the decisions of this Court in *Adams Express Co.* v. *Croninger*, 226 U. S., 491, and other cases upon which defendant relied, are inapplicable, because in this case there was no misstatement of *value*, but

merely a non-fraudulent misstatement of the *kind* of goods shipped; and because there was no specific clause in the present Bill of Lading exempting the carrier from liability in case of a misrepresentation of the property. That neither the Interstate Commerce Act nor the decisions of this Court exempt a carrier from liability for a misdescription such as the present one (Opinion of the App. Div., pp. 58-61).

15. The judgment was affirmed by the Court of Appeals, which is the highest court of the State in which a decision could be had, on May 25th, 1917. No opinion was written by that court upon the affirmance of the judgment except the following memorandum:

> "Action to recover value of furs shipped by freight over defendant's road, marked as dry goods, which were stolen while in transit. Defense was that the goods were shipped as dry goods and claims not to be liable for goods of a different character than those specified in bill of lading. App. Div. relied on 226 U. S., 491."

The remittitur from the Court of Appeals was returned to the Supreme Court, New York County, on May 28th, 1917, and judgment on said remittitur was entered by the plaintiff on May 31st, 1917.

16. The question involved in this case is "Is a railroad company liable for the loss of goods of a different character than those described by the shipper in the bill of lading, and for the transportation of which a different and higher rate is fixed by its tariffs and classifications filed with the Interstate Commerce Commission, than is provided in said schedules for the transportation of goods of the character described in the bill of lading?"

17. Your petitioner avers that the present case is one in which it is proper for this court to grant a writ of certiorari for the following reasons among others:

A. The rates established by railroad companies for the transportation of freight are, with but few exceptions, determined by the classification upon which the rate is based, and the classification of an article depends upon its character and value.

B. It is well established by the decisions of this court that a shipper may not recover a greater *value* than that specified in the bill of lading and upon which the transportation charges are based, and your petitioner verily believes that the principle decided in those cases applies with equal force to a case like the present where alternative rates of the carrier are based upon the *character* and value instead of solely upon value, the value of the goods transported, but this precise question does not appear to have been involved in any case presented to this court for decision since the enactment of the amendment to the Interstate Commerce Act of September, 1906.

18. Your petitioner further avers that to permit a shipper who has misdescribed his property and as a result thereof has obtained a lower rate for the transportation of such property in interstate commerce than would have been charged if the property had been correctly described, would encourage fraudulent misbilling of property by shippers and result in preferences and discriminations in violation of the provisions of the Act to Regulate Commerce.

19. Your petitioner further avers that a decision on this question by this court is of great importance to shippers and common carriers, generally. That other cases involving the same question are now pending in the courts of New York State and other states against this defendant and other railroad companies.

20. Because of the foregoing and because of the final judgment of the Court of Appeals of New York State which is the highest court of the State in which a decision could be had and where your petitioner especially

set up and claimed a title, right, privilege and immunity under the Constitution, and statutes of, and a commission held or authority exercised under the United States and particularly a right, privilege and immunity under the Act to Regulate Commerce and the schedules filed by your petitioner pursuant to the provisions of said Act, and the decision was against such title, right, privilege and immunity, especially set up and claimed by your petitioner, the said judgment being now the judgment of the Supreme Court for New York County, New York State,

21. Your petitioner prays that a writ of certorari may issue in this case to the Supreme Court, New York County, in the State of New York, to bring up this case to this court for such proceedings therein as may be just.

THE NEW YORK CENTRAL RAILROAD COMPANY,

By E. F. STEPHENSON

Ass't. *Secretary.*

CHARLES C. PAULDING,
Attorney and Counsel for Petitioner.

STATE OF NEW YORK, }
County of New York, } ss.:

E. F. STEPHENSON, being duly sworn, says he is the (Ass't.) secretary of the New York Central Railroad Company, the petitioner herein; that he has read the foregoing petition; and that the same is true of his own knowledge, except as to the matters therein alleged to be upon information and belief, and as to those matters he believes it to be true.

Sworn to before me this 22 day of August, 1917.
J. M. O'MAHONEY.
NOTARY PUBLIC, NEW YORK CO., N. Y. No. 31
NEW YORK CO. REGISTER No 9012
My Commission Expires June 30, 1919

E. F. STEPHENSON

I hereby certify that I have examined the foregoing petition and that in my opinion the petition is well founded and the case is one in which the prayer of the petitioner should be granted by this court.

William Nanu
Of Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Petitioner,

against

SAMUEL GOLDBERG,
Respondent.

MEMORANDUM IN BEHALF OF PETITIONER IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

FIRST POINT.

The State Courts erred in permitting plaintiff to recover for the loss of goods of a different character than those described in the Bill of Lading, and for the transportation of which a higher rate is provided in Defendant's filed schedule than is provided for the transportation of goods of the character described.

Adams Express Co. v. *Croninger*, 226 U. S. 491.
C. B. & Q. R. R. Co. v. *Miller* 226 U. S. 513.
C. St. P. M. & O. R. R. v. *Latta* 226 U. S. 519.
Wells-Fargo Co. v. *Neiman-Marcus Co.* 227 U. S. 469.
Kansas City So. Ry. Co. v. *Carl* 227 U. S. 639.

M. K. & T. Ry. Co. v. *Harriman* 227 U. S. 657.
Cramer v. *C. R. I. & P. Ry. Co.* 232 U. S. 490.
Gt. Nor. Ry. Co. v. *O'Connor* 232 U. S. 508.
Boston & Maine R. R. Co. v. *Hooker* 233 U. S. 97.
Pierce v. *Wells-Fargo Co.* 236 U. S. 278.
C. N. O. & T. P. Ry. Co. v. *Rankin* 241 U. S. 319.
N. Y. C. & H. R. R. Co. v. *Beaham* 242 U. S. 148.
Western Transit Co. v. *Leslie* 242 U. S. 448.
D'Utassy v. *Barrett* 219 N. Y. 420.

Although most of the decisions referred to above involve shipments with respect to which the alternative rates of the carrier were based upon value, the principles established in those cases apply to a case like the present where the alternative rates are based upon the character of the property instead of upon its value.

In *Great Northern Ry.* v. *O'Connor. Supra*, this court said:

> "If, on the other hand, there are alternative rates based on value and the shipper names a value to secure the lower rate, the carrier, in the absence of something to show rebating or false billing, is entitled to collect the rate which applies to goods of that class, and if sued for their loss it is liable only for the loss of what the shipper had declared them to be in *class* and *value*." (Italics ours.)

In this case the alternative rates of the carrier were based upon the class or nature of the goods which classification is determined by the character and value of the property. Official Classification No. 38 (Defendant's Exhibit "D", page 51) provided for a first-class rate on dry goods, and a double first-class rate on furs.

The first-class rate from New York to Cincinnati was 65c per hundred, and double first-class rate $1.30 per hundred. The rate charged was the first-class.

Under Section 6 of the Interstate Commerce Act defendant is required to file with the Interstate Commerce Commission schedules showing rates, fares and charges for the transportation of all property transported by it. That section further provides that "the schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, *and shall contain the classification of freight in force.*"

The plaintiff is charged with knowledge of the provisions of the classification filed with the Interstate Commerce Commission to the same extent that he would be charged with knowledge of rates based solely on value, and is conclusively presumed to have known that dry goods were classified as first-class for the purposes of fixing the rate for transportation, and furs were classified as double first-class. The agreement entered into between the parties, therefore, consisted of the bill of lading, in which the property is described as dry goods, and the tariffs filed with the Interstate Commerce Commission, specifying the rate to be charged for the transportation of dry goods, and was an agreement on the part of the defendant to transport dry goods and not furs.

The Federal common-law rule prior to the enactment of the Interstate Comerce Act was that a common carrier was not liable for the loss of goods of a different character than those which it had agreed to transport and for the transportation of which it received no compensation. (*Humphreys* v. *Perry*, 148 U. S. 627). In that case it was held that the plaintiff was not entitled to recover for the loss of a trunk of jewelry which he offered to and which was checked by the defendant as

his personal baggage, although he had paid a charge for the excess weight of the property. The ground upon which the carrier was held not liable was because there was no agreement on its part to transport property for the plaintiff except personal baggage, and as the contents of the trunk lost did not consist of the plaintiff's personal baggage there was no liability because there was no agreement to transport that property. In the opinion the court says (page 641):

> "This principle is commented on in Story on Bailments, 9th ed., sec. 565, where is it said 'It is the duty of every person sending goods by a carrier to make use of no fraud or artifice to deceive him, whereby his risk is increased, or his care and diligence may be lessened. And if there is any such fraud or unfair concealment, it will exempt the carrier from responsibility under the contract, or, more properly speaking, it will make the contract a nullity.'"

In *Hart* v. *Pensylvania Railroad Co.*, 112 U. S. 331, 342, the court says (page 342):

> "As relating to the question of the exemption of a carrier from liability beyond a declared value, reference may be made to section 4281 of the Revised Statutes of the United States (a re-enactment of section 69 of the act of February 28, 1871, ch. 100, 16 Stat. 458), which provides, that if any shipper of certain enumerated articles, which are generally articles of large value in small bulk, 'shall lade the same, as freight or baggage, on any vessel without at the time of such lading giving to the master, clerk, agent, or owner of such vessel receiving the same, a written notice of the true character and value thereof, and having the same entered on the bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner, nor shall

> any such master or owner be liable for any such goods, beyond the value and according to the character thereof so notified and entered.' The principle of this statute is in harmony with the decision at which we have arrived."

The rates established by railroad companies for the transportation of most articles are based on the classification of the property as shown by Official Classification No. 38 (Defendant's Exhibit "D"). A lower rate than that to which the shipper is entitled under the classifications and tariffs of the carrier can as easily be obtained by a shipper by inserting an erroneous description of the character of the property in the bill of lading as by understating its value. The evidence in this case shows that this shipper had made other shipments of furs described as dry goods, and presumably he had obtained the benefit of the lower rate in those cases. His truckman testified that he had received instructions from his employer to describe all shipments received from this firm as dry goods, although it is conceded that they dealt in nothing but furs.

To permit the plaintiff to recover in this case the value of furs when the rate which he was charged was the lower rate applicable to dry goods, would enable him to obtain a preference over other shippers of furs who have correctly described their property in the bill of lading and paid the higher rate applicable to goods of that class, contrary to the provisions of the Interstate Commerce Act.

SECOND POINT.

The State Courts erred in holding defendant was liable because there was no specific provision in the Bill of Lading that it should not be liable if the goods were of a different character than described in the Bill of Lading.

The state courts erroneously treated the case as one which involved an attempt on the part of the defendant to exempt itself from liability imposed upon it by the bill of lading and held defendant liable because it had not provided in the bill of lading that it would not be liable for goods of a different character than those described.

It was unnecessary for the defendant to so provide in the bill of lading because it was entitled to rely upon the description inserted therein by the agent of the shipper. No liability was imposed upon it under the bill of lading for the loss of furs. It did not agree to transport furs. The agreement was to transport dry goods. If its agreement had been one for the transportation of furs it could not have exempted itself from liability for their loss; but not having agreed to transport goods of that character it is not liable for their loss irrespective of the fact that the bill of lading did not provide that defendant should not be liable except in accordance with the provisions of that agreement. In *Kansas City Southern Ry.* v. *Carl*, 227 U. S. 639, it is held that an agreement to release a carrier for part of a loss due to negligence is no more valid than one for a complete exemption, and neither is such a contract any more valid because it rests upon a consideration than if it was without consideration. In the opinion in this case the court says (pages 650-651):

> "Is the contract here involved one for exemption from liability for negligence and therefore forbidden? An agreement to release such a carrier for

part of a loss due to negligence is no more valid than one whereby there is complete exemption. Neither is such a contract any more valid because it rests upon a consideration than if it was without consideration. A declared value by the shipper for the purpose of determining the applicable rate, when the rates are based upon valuation, is not an exemption from any part of its statutory or common-law liability. The right of the carrier to base rates upon value has been always regarded as just and reasonable. The principle that the compensation should bear a reasonable relation to the risk and responsibility assumed is the settled rule of the common law."

"The ground upon which such a declared or agreed value is upheld is that of estoppel. Thus in *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331, 340, 341, it is stated:

" 'As a general rule, and in the absence of fraud or imposition, a common carrier is answerable for the loss of a package of goods though he is ignorant of its contents, and though its contents are ever so valuable, if he does not make a special acceptance. This is reasonable, because he can always guard himself by a special acceptance, or by insisting on being informed of the nature and value of the articles before receiving them. If the shipper is guilty of *fraud or imposition*, by misrepresenting the *nature or value* of the articles, he destroys his claim to indemnity because he has attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed, and what he has done has tended to lessen the vigilance the carrier would otherwise have bestowed.' "
(Italics ours.)

In *Great Northern Ry.* v. *O'Connor*, 232 U. S. 508, there was no specific agreement in the bill of lading

exempting the carrier from liability for the loss of property of a higher value than that stated therein. The only provision in the bill of lading in reference to value was the notation, "Released to $10 per cwt." The judgment was reversed because it appeared that the rate paid was the established rate for the transportation of goods when the declared value did not exceed $10 per hundred pounds.

THIRD POINT.

The State Courts erred in holding defendant was liable because the misdescription was non-fraudulent.

The plaintiff's acceptance of the bill of lading precludes him from recovering for goods of a different class than those described, irrespective of whether or not the misdescription was fraudulent.

In *Great Northern Ry. Co.* v. *O'Connor, supra,* the facts were that plaintiff had personal effects weighing 545 pounds and worth $598, which she delivered to a transfer company, which was also a forwarder, to box and ship from Minneapolis to Portland, Oregon. The regular freight rate for such a shipment would have been $3 per cwt., but without express authority from her the company forwarded her goods with others under the terms of a tariff which named $1 as the rate on carload shipments of household goods valued at less than $10 per cwt. Although it apears that there was no fraudulent misstatement by the plaintiff, it was held that she was not entitled to recover in excess of the valuation upon which the freight charges were based; that she was bound by the bill of lading and

her remedy, if any, was against the forwarding company.

In *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469, it appears that the consignors kept in their shipping office a book containing blank express receipts. One of these was filled out by their shipping clerk. When the wagon of the express company called at the office the express agent signed the receipt and the package was delivered to him by a boy assistant to the shipping clerk. No questions were asked as to the value of the property, and no value declared other than as shown in the receipt. The clerk who wrapped and marked the package did not know the value of it, and had no actual knowledge of the rates of the express company. The ground upon which the judgment in that case was reversed by this Court is stated in the opinion of Mr. Justice Lurton (page 476) as follows:

> "But the shipper in accepting the receipt reciting that the company 'is not to be held liable beyond the sum of fifty dollars, at not exceeding which sum said property is hereby valued, unless a different value is hereinabove stated,' did declare and represent that the value did not exceed that sum, and did obtain a rate which he is to be assumed to have known was based upon that as the actual value. There is no substantial distinction between a value stated upon inquiry, and one agreed upon or declared voluntarily. The rate of freight was based upon the valuation thus fixed, and the liability should not exceed the amount so made the rate basis. *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331, 338."

In *Reid* v. *American Exp. Co.*, 241 U. S. 544, the owner of an automobile delivered it to an express company in London to be forwarded to New York, declaring its value to be far in excess of $100. The express

company had it boxed and delivered it to a steamship company, and accepted a bill of lading with a limitation of liability to $100. The property was damaged while being discharged by a stevedore from the ship. It was held that the liability of the steamship company did not exceed $100, that the stevedore was liable for the difference between that amount and the actual value of the property; and in case of failure to recover against the stevedore, the express company was liable to the shipper for the difference because it had accepted a bill of lading in which the value of the property was limited to $100, without authority from the owner.

The bill of lading which was issued by the defendant to the plaintiff in this case is a standard form of straight bill of lading approved by the Interstate Commerce Commission by its order No. 787 of June 27, 1908 (In the matter of Bills of Lading, XIV I. C. C. Reports, p. 346). In that form, a blank space is provided for the description of the articles and special marks, if any. The description of the property was inserted in the bill of lading by the expressman employed by the shipper, and after the property was delivered to the defendant and receipted for by it the shipper accepted the bill of lading containing the description inserted by his expressman. The plaintiff is, therefore, estopped from recovering the value of goods of a different character than those described in the contract of transportation, and upon which the charges were based and his remedy, if any, is against the expressman who misdescribed the contents of the case.

FOURTH POINT.

Error was committed by the Trial Court in admitting oral evidence as to marks on the case, and by the Appellate Courts in giving prevailing effect to the agreement as evidenced by those marks contrary to the written agreement evidenced by the Bill of Lading and filed schedules of the defendant applicable to the transporation of goods of the class described in the Bill of Lading.

It is alleged in the complaint in this action that "in consideration of a reasonable compensation then agreed to be paid to it by the plaintiff *and which compensation was the usual freight rate for dry goods* between New York City and Cincinnati," defendant agreed safely to carry the goods in question to Cincinnati. It would have been unlawful and contrary to the filed tariffs for the defendant, if the goods had been described in the bill of lading as "furs", to have made an agreement to transport them at the lower rate provided in said schedules for the transportation of dry goods.

In *Atchison &c. Ry. Co.* v. *Robinson*, 233 U. S. 173, plaintiff's recovery was based upon an alleged oral agreement made by him with the agent of the defendant for the transportation of livestock. Plaintiff signed and accepted a livestock bill of lading, and the rate which he paid for the transportation of the property was the rate shown in the filed tariffs of the defendant for the transportation of property shipped subject to the terms and conditions of that bill of lading. In the opinion in that case the court says (page 180):

> "We regard these cases as settling the proposition that the shipper as well as the carrier is bound

to take notice of the filed tariff rates and that so long as they remain operative they are conclusive as to the rights of the parties, in the absence of facts or circumstances showing an attempt at rebating or false billing. *Great Northern Ry. Co.* v. *O'Connor, supra.* To give to the oral agreement upon which the suit was brought, the prevailing effect allowed in this case by the charge in the trial court, affirmed by the judgment of the Supreme Court of the State, would be to allow a special contract to have binding force and effect though made in violation of the filed schedules which were to be equally observed by the shipper and carrier. If oral agreements of this character can be sustained then the door is open to all manner of special contracts, departing from the schedules and rates filed with the Commission. *Kansas City Southern Ry. Co.* v. *Carl, supra,* p. 652. To maintain the supremacy of such oral agreements would defeat the primary purposes of the Interstate Commerce Act, so often affirmed in the decisions of this court, which are to require equal treatment of all shippers and the charging of but one rate to all, and that the one filed as required by the act."

In the present case prevailing effect has been given to the marks on the case over the description of the property in the bill of lading, and the defendant was held liable for the loss of goods of a different character than those which it had agreed to transport, because of the admission over the defendant's objection and exception of evidence that the plaintiff had marked the value and a description of the contents on the case itself.

In *D'Utassy* v. *Barrett, supra* (p. 426), it is said:

"that having obtained a rate based on the declared value the shipper is concluded and there is

no room for parol evidence to show otherwise. (*Mo., K. & T. Ry. Co.* v. *Harriman,* 227 U. S. 657, 670);"

Under the authorities above cited, it is respectfully submitted that inasmuch as the plaintiff obtained a rate based upon the declared character of the property he should not have been permitted to introduce evidence of the marks on the case for the purpose of holding the defendant to a different liability than that evidenced by the bill of lading and filed tariffs.

FIFTH POINT.

The State Courts erred in holding that it was the duty of the defendant under the Bill of Lading to inspect the contents of the case to ascertain whether the goods were correctly described in the Bill of Lading.

In *Wells, Fargo & Co.* v. *Neiman-Marcus Co.,* 227 U. S. 469, the defendant's rules, which were filed with the Interstate Commerce Commission, required that the agent of the express company ask the shipper the value of the property, and insert the value stated, or if no value was stated, stamp the package, "Value asked and not given." This was not done. The State Court affirmed a judgment in favor of the plaintiff, upon the ground that the company's agent had failed to perform a plain duty, and it was in no attitude to complain that the shipper did not state the value. In reversing that judgment this court held that the shipper in accepting the bill of lading represented that the value did not exceed the sum specified therein, that the rate of freight was based upon that valuation and

the liability should not exceed the amount so made the rate basis.

And in the *Great Northern Ry. Co.* v. *O'Connor, supra*, the court says (page 515): "in view of the multitude of transactions it is not necessary that there shall be an inquiry as to each article or a distinct agreement as to the value of each shipment."

If a carrier is liable only for the value specified in the bill of lading issued to a shipper when its filed rules require its agent to ask the value of the shipper and insert the value stated in the bill of lading and he fails to do so, this defendant certainly was not required to open and inspect the contents of this case to ascertain whether the description in the bill of lading was correct, even though under the bill of lading it had the right to make such inspection. There is no obligation on the part of a carrier to inspect the contents of all cases of goods which it receives.

> "The volume and methods of the business of transportation by railroads and transportation lines, render it practically impossible in most cases for the carrier to ascertain by examination the contents of packages received for carriage." *Miller* v. *Hannibal & St. Joseph R. R.*, 90 N. Y. 435.

The testimony of defendant's witness Bulger shows that it is not the custom of the defendant to have the contents of cases of goods inspected except where defendant has reason to believe that a particular shipper is misrepresenting the character of property delivered to it for transportation as described in the shipping receipt. The provision in the Bill of Lading merely reserves to the carrier the right to assess correct charges if it discovers by an inspection that the property has been misdescribed but is not an agreement on its part to make such inspection. The duty to correctly describe

the contents of cases is imposed on the shipper by the Statute and the Schedules filed pursuant thereto.

CHARLES C. PAULDING,
Attorney for Petitioner.

WILLIAM MANN,
of counsel.

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JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM 1918.

No. 256.

THE NEW YORK CENTRAL RAILROAD COMPANY,

Petitioner,

against

SAMUEL GOLDBERG,

Respondent.

BRIEF FOR PETITIONER.

CHARLES C. PAULDING,
Attorney for Petitioner.

WILLIAM MANN,
of Counsel.

Supreme Court of the United States

NEW YORK CENTRAL RAILROAD COMPANY, *Petitioner,* *against* SAMUEL GOLDBERG. *Respondent.*	No. 256—October Term 1918.

On Writ of Certiorari to the Supreme Court of the State of New York, County of New York

BRIEF FOR PETITIONER

STATEMENT OF THE CASE

This case comes to this court on a Writ of Certiorari issued by this Court on October 25, 1917, to review a judgment of the Supreme Court of the State of New York, County of New York, dated May 29, 1917, entered on an order and judgment of the Court of Appeals of the State of New York (pp. 31 and 33), which affirmed a judgment of the Appellate Division of the Supreme Court of the State of New York (p. 27) which latter judgment affirmed a judgment of the Supreme Court, New York County, in favor of the Respondent (Plaintiff) and against the Petitioner (Defendant) for the sum of $749.38 (p. 7).

Facts.

It is alleged in the complaint that on or about September 17th, 1912, at New York City, the defendant in consideration of the payment to it by the plaintiff of the usual freight rate for the transportation of dry goods from New York City to Cincinnati, agreed safely to carry to Cincinnati and there deliver to the plaintiff certain property of the value of $693.75, and that defendant did not carry said goods pursuant to said agreement, but on the contrary permitted same to become lost or stolen in transit, (Complaint, p. 3).

In its answer defendant set up as a separate defense that if it received the property mentioned in the complaint for transportation, the same was received by it pursuant to the terms of a written agreement wherein it was described as consisting of dry goods; that defendant had theretofore filed with the Interstate Commerce Commission copies of its classifications and schedules of rates for the transportation of dry goods and furs from New York to Cincinnati, which provided for a first-class rate on dry goods and double first-class rate on furs; that defendant relied upon the description contained in the bill of lading issued by it for the transportation of the property and agreed to transport same at the rate provided in said tariffs and classifications for the transportation of dry goods; that the property was stolen in transit and thereafter defendant learned that the case contained furs and not dry goods. (Answer Pages 4-5).

Defendant's Exhibit "A", is the bill of lading which the defendant issued for the transportation of the property. The description contained therein is, "One (1) Case D. G." meaning dry goods. This description was inserted in the bill of lading by August Smith to whom

the case of goods was delivered by Steinbach Brothers, the shippers, for delivery to the defendant and who testified that he got the information from which he filled out the bill of lading, which was one of the defendant's blank forms, from the case; and that he had instructions from his employer to describe all cases of goods which he handled as dry goods (pp. 17-19).

Plaintiff's Exhibit 1, is an invoice from Steinbach Brothers to the consignee and contains a list of the various articles in the case and the invoice price of each article. The contents of the case consisted entirely of furs, some imitation and some real (fols. 58-60).

Steinbach Brothers are manufacturing furriers and do not ship dry goods (p. 14). On June 1, 1913, they delivered to the defendant three cases of furs which were described in the bill of lading as dry goods. Defendant's Exhibit "B".

Over defendant's objection and exception plaintiff was permitted to introduce testimony of officers and employes of the firm of Steinbach Brothers to the effect that the case was marked "Furs, Value $750.00" (p. 13). Plaintiff's witness Shimm testified that the name and address of the consignee was marked on the middle of the case and, the words "Furs. Value $750" was on the corner of the case (p. 15).

It was conceded by the plaintiff that at the time the property was received by the defendant the official classification filed by it with the Interstate Commerce Commission provided for a first-class rate on dry goods and double first-class rate on furs; that the first-class rate between New York, N. Y., and Cincinnati, Ohio, was 65c per hundred pounds and double first-class rate $1.30 per hundred pounds. (p. 19)

Defendant conceded that it received the case for transportation and that it was stolen in transit and not delivered to the consignee (p. 12).

Joseph M. Bulger employed by the defendant as Chief Billing Clerk at its station at 33rd Street, New York City, where the defendant received the property for transportation, testified that when property is received, the receiving clerk signs the bill of lading, of which defendant's Exhibit "A" is a copy, and that paper is returned to the shipper. A duplicate of the bill of lading is retained by the defendant which is sent to the office of the billing clerk for the purpose of fixing the rate which is determined from the description of the property shown in the bill of lading.

The billing clerk does not see the packages when fixing the rate, but relies entirely on the description contained in the bill of lading (p. 23). This witness also described the method of receiving and loading property at defendant's 33rd Street Station and testified that after he received the duplicate bill of lading, he filled out from that bill of lading a waybill, which is forwarded to destination with the property, in which is inserted the name of the consignee, description of the property, the rate charged for the transportation and the number and initials of the car in which it was transported, etc. Defendant's Exhibit "C", (p.49), is a copy of the waybill issued by defendant for this case of goods. This exhibit shows that the weight of the case was three hundred and sixty-five pounds, the rate sixty-five cents per hundred pounds, total freight charges $2.35. Unless there is some reason to believe that the shipper misrepresents the property, no inspection is made to determine whether the articles shipped are as described in the bill of lading (pp. 21-22). The official classification filed with the Interstate Commerce Commission and in effect on the day the property was received by defendant, was offered in evidence by the defendant. (Defendant's Exhibit D, page 25).

Brief of the Argument.

1. The defendant is not liable for the loss of goods of a different character than those described in the bill of lading and for the transportation of which a higher rate is established by its filed schedules. (*Southern Express Co.* v. *Byers*, 240 U. S. 612; *New York Central &c. Co.* v. *Beahan*, 242 U. S. 148; *D'Utassy* v. *Barrett*, 219 N. Y. 420; *Adams Express Co.* v. *Croninger*, 226 U. S. 491; *Kansas City Southern Ry.* v. *Carl*, 227 U. S. 639; *Great Northern Ry.* v. *O'Connor*, 232 U. S. 508; *Mo. Kans. & Tex. Ry.* v. *Harriman*, 227 U. S. 657; *Southern Ry.* v. *Prescott*, 240 U. S. 632; *Humphreys* v. *Perry*, 148 U. S. 627; *Hart* v. *Pennsylvania Railroad Co.*, 112 U. S. 331-342.

2. The fact that the Trial Court found the misdescription was made without fraudulent intent is not material; the plaintiff is concluded by the bill of lading and the filed tariffs, and his remedy if any is against his agent who misdescribed the property. *Great Northern Ry. Co.* v. *O'Connor, supra; Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469; *Reid* v. *American Exp. Co.*, 241 U. S. 544.

3. The Court erred in admitting evidence as to the marks on the case of goods. *Atchison &c. Ry. Co.* v. *Robinson*, 233 U. S. 173; *D'Utassy* v. *Barrett, supra.*

4. There was no duty on the part of the defendant to inspect the contents of the case and it is not liable because of its failure to do so. *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469; *Great Northern Ry. Co.* v. *O'Connor, supra.*

POINT ONE.

The defendant is not liable for the loss of goods of a different character than those described in the bill of lading, and for the transportation of which a higher rate is established by its filed schedules.

The shipment in question was an interstate one, the property having been consigned from New York City to Cincinnati, Ohio. The rights and liabilities of the parties, therefore, depend upon the Interstate Commerce Act, the bill of lading, the schedules of the carrier filed with the Interstate Commerce Commission pursuant to the Act, and common law rules as accepted and applied in Federal tribunals. (*Southern Express Co.* v. *Byers*, 240 U. S. 612; *New York Central &c. Co.* v. *Beahan*, 242 U. S. 148; *D'Utassy* v. *Barrett*, 219 N. Y. 420.)

The Trial Justice held that the contract between the parties recognized the fact that accuracy of description was not essential to the carrier's accepted duty to transport and deliver the goods because the bill of lading contained a provision that "if upon inspection it is ascertained that the articles shipped are not those described freight charges must be paid upon the articles actually shipped"; that the evidence did not show that the error in description had anything to do with the loss of the property, and following the authority of *Rathbone* v *The N. Y. C. & H. R. R. R. Co.*, 140 N. Y. 48, found that the defendant had accepted the shipment truly and plainly marked "furs" with notice of what was shipped and under an agreement to transport it, and was therefore liable for its loss (pp. 9-11).

The Appellate Division in its opinion written upon the affirmance of judgment, says that the decisions of this Court in *Adams Ex. Co.* v. *Croninger*, 226 U. S. 491

and other cases upon which the defendant relied, and in which it was held that where a carrier has filed alternative rates based upon the value of property its liability does not exceed the value specified in the bill of lading, do not go to the extent of relieving the carrier from all liability; that those cases are inapplicable because here there was no misstatement of *value* but merely a nonfraudulent misstatement of the *kind* of goods shipped, and for that reason and because there was no specific clause in the present bill of lading exempting the defendant from liability in case of a misdescription of the property, it held that defendant was liable for the value of the furs, but that it had the right to collect the difference in freight if it discovered the mistake and that the shipper was criminally liable if he knowingly and wilfully misdescribed the contents of the package (pp. 28-30).

No opinion was written by the Court of Appeals.

We respectfully submit that the Appellate Division misapprehended the grounds upon which the recent Federal cases referred to are based; that the reason why it was held in those cases the carrier was not liable for the loss of goods of a higher value than those specified in the bill of lading was that the transportation charges were based upon such valuation, that the carrier received no compensation for transporting goods of a higher value and there was therefore no agreement to transport same, and that to permit a shipper who has obtained the lower of two rates based upon value to recover a higher valuation than that made the rate basis would enable him to obtain a preference over other shippers who had paid the higher rate, and defeat the primary purpose of the Interstate Commerce Act which requires equal treatment of all shippers and the charging of one rate to all, and that, the rate on file as required by the Act.

The case is not one involving an attempt on the part of the carrier to exempt itself from liability for a loss for which it is liable under the law or under its contract of transportation. The only question involved is whether a carrier is liable for the loss of goods not described in the bill of lading and which it did not agree to transport.

In *Adams Express Co.* v. *Croninger*, 226 U. S. 491, the court says (pages 509-511):

> "That a common carrier cannot exempt himself self from liability for his own negligence or that of his servants is elementary. *York Mfg. Co.* v. *Illinois Central Railroad*, 3 Wall. 107; *Railroad Company* v. *Lockwood*, 17 Wall. 357; *Bank of Kentucky* v. *Adams Express Company*, 93 U. S. 174; *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331, 338."
>
> "That such a carrier might fix his charges somewhat in proportion to the value of the property is quite as reasonable and just as a rate measured by the character of the shipment. The principle is that the charge should bear some reasonable relation to the responsibility, and that the care to be exercised shall be in some degree measured by the bulk, weight, character and value of the property carried.
>
> "Neither is it conformable to plain principles of justice that a shipper may understate the value of his property for the purpose of reducing the rate, and then recover a larger value in case of loss."
>
> " 'But such a contract as we are considering in this case is not an exemption from liability for negligence in the management of property, within the meaning of the statute. It is a contract as to what the property is, in reference to its value. The purpose of it is not to change the nature of the undertaking of the common carrier, or limit his obli-

> gation in the care and management of that which is entrusted to him. It is to describe and define the subject matter of the contract, so far as the parties care to define it, for the purpose of showing of what value that is which comes into the carrier's possession, and for which he must account in the performance of his duty as a carrier. It is not in any proper sense a contract exempting him from liability for the loss, damage or injury to the property, as the shipper describes it in stating its value for the purpose of determining for what the carrier shall be accountable upon his undertaking, and what price the shipper shall pay for the service and for the risk of loss which the carrier assumes.' ''

Unless defendant is relieved from liability in this case because of the fact that the property is of a different character than that described in the bill of lading, and upon which the transportation rate is based, it would not be relieved from such liability because of any provision to that effect in the bill of lading. In *Kansas City Southern Ry.* v. *Carl,* 227 U. S. 639, it is held that an agreement to release a carrier for part of a loss due to negligence is no more valid than one for a complete exemption, and neither is such a contract any more valid because it rests upon a consideration than if it was without consideration. In the opinion in this case the court says (pages 650-651):

> "Is the contract here involved one for exemption from liability for negligence and therefore forbidden? An agreement to release such a carrier for part of a loss due to negligence is no more valid than one whereby there is complete exemption. Neither is such a contract any more valid because it rests upon a consideration than if it was without consideration. A declared value by the

shipper for the purpose of determining the applicable rate, when the rates are based upon valuation is not an exemption from any part of its statutory or common-law liability. The right of the carrier to base rates upon value has been always regarded as just and reasonable. The principle that the compensation should bear a reasonable relation to the risk and responsibility assumed is the settled rule of the common law."

"The ground upon which such a declared or agreed value is upheld is that of estoppel. Thus in *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331, 340, 341, it is stated:

" 'As a general rule, and in the absence of fraud or imposition, a common carrier is answerable for the loss of a package of goods though he is ignorant of its contents, and though its contents are ever so valuable, if he does not make a special acceptance. This is reasonable, because he can always guard himself by a special acceptance, or by insisting on being informed of the nature and value of the articles before receiving them. If the shipper is guilty of *fraud or imposition*, by misrepresenting the *nature or value* of the articles, he destroys his claim to indemnity because he has attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed, and what he has done has tended to lessen the vigilance the carrier would otherwise have bestowed.' "

In *Great Northern Ry.* v. *O'Connor*, 232 U. S. 508, there was no specific agreement in the bill of lading exempting the carrier from liability for the loss of property of a higher value than that stated therein. The only provision in the bill of lading in reference to

value was the notation, "Released to $10 per cwt." It was shown that the rate paid was the rate provided in the filed tariffs of the carrier for the transportation of household goods when the declared value did not exceed $10 per cwt. In reversing a judgment in favor of the plaintiff for the full value of the property, the court said (page 515):

> "But so long as the tariff rate, based on value, remained operative it was binding upon the shipper and carrier alike and was to be enforced by the courts in fixing the rights and liabilities of the parties. The tariffs are filed with the Commission and are open to inspection at every station. In view of the multitude of transactions, it is not necessary that there shall be an inquiry as to each article or a distinct agreement as to the value of each shipment. If no value is stated the tariff rate applicable to such a state of facts applies. If, on the other hand, there are alternative rates based on value and the shipper names a value to secure the lower rate, the carrier, in the absence of something to show rebating or false billing, is entitled to collect the rate which applies to goods of that class, and if sued for their loss it is liable only for the loss of what the shipper had declared them to be in class and value."

It will be noted that while, in the cases above cited the alternative rates were based upon value, the court distinctly states that the carrier when sued by a shipper for the loss of goods is liable only for what the shipper has declared them to be in *class* and *value*. In the present case the alternative rates were based upon the class or character of the property instead of upon value, and the shipper has been permitted to recover for the loss of goods of a different class than those described

in the contract, and upon which the charges were based.

In *Mo. Kans. & Tex. Ry.* v. *Harriman*, 227 U. S. 657, Mr. Justice Lurton, writing the opinion, says (page 670):

> "That the value of the cattle shipped under this valuation did greatly exceed the valuation therein represented, may be true. It only serves to show that the shipper obtained a lower rate than he was lawfully entitled to have by a misrepresentation. It is neither just nor equitable that he shall benefit by the lower rate, and then recover for a value which he said did not exist, in order to obtain that rate. Having obtained a rate based upon the declared value, he is concluded, and there is no room for parol evidence to show otherwise."

In *Southern Ry.* v. *Prescott*, 240 U. S. 632, the court says (page 638):

> "It is also clear that with respect to the service governed by the Federal statute the parties were not at liberty to alter the terms of the service as fixed by the filed regulations. This has repeatedly been held with respect to rates (*Tex. & Pac. Rwy.* v. *Mugg*, 202 U. S. 242; *Kansas Southern Rwy.* v. *Carl*, 227 U. S. 639, 652; *Boston & Maine R. R.* v. *Hooker*, 233 U. S. 97, 112; *Louis & Nash. R. R.* v. *Maxwell*, 237 U. S. 94), and the established principle applies equally to any stipulation attempting to alter the provisions as fixed by the published rules relating to any of the services within the purview of the Act. *Chicago & Alton R. R.* v. *Kirby*, 255 U. S. 155, 166; *Atchison &c. Ry.* v. *Robinson*, 233 U. S. 173, 181. This is the plain purpose of the statute in order to shut the door to all contrivances in violation of its provisions

against preferences and discriminations. No carrier may extend any privileges or facilities, save as these have been duly specified."

In *D'Utassey* v. *Barrett*, 219 N. Y., 420, Pound, J., writing the opinion, says, (p. 425-6):

> "The reason for the rule sustaining the declared and agreed valuation is to prevent fraudulent practices by shippers in obtaining a lower rate by under valuation. (*Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 652; *Pierce Co.* v. *Wells, Fargo & Co.*, 236 U. S. 278.)" * * * But the contract in suit does not evade the liability; it merely fixes the valuation of the goods when liability is established. In an action for damages against the carrier, the shipper is bound by the terms of the contract, and it is of the highest importance that competent parties be held to the terms of their valid contracts." * * * "The contention of appellant that the agreed value does not conclude the shipper as against the acts of employees outside the scope of their employment cannot be sustained without ignoring the terms of the contract, disregarding the intent of the parties and of the acts of Congress regulating interstate transportation and holding the carrier to a different responsibility than that which it assumed."

Although most of the decisions referred to above involve shipments with respect to which the alternative rates of the carrier were based upon value, the principles established in those cases apply to a case like the present where the alternative rates are based upon the character of the property instead of upon its value.

In this case the alternative rates of the carrier were based upon the class or nature of the goods instead of

upon value. Official Classification No. 38 (Defendant's Exhibit "D", page 51) provided for a first-class rate on dry goods, and a double first-class rate on furs. The first-class rate from New York to Cincinnati was 65c per hundred, and double first-class rate $1.30 per hundred. The rate charged was the first-class.

Under Section 6 of the Interstate Commerce Act defendant is required to file with the Interstate Commerce Commission schedules showing rates, fares and charges for the transportation of all property transported by it. That section further provides that "the schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, *and shall contain the classification of freight in force.*"

The plaintiff is charged with knowledge of the provisions of the classification filed with the Interstate Commerce Commission to the same extent that he would be charged with knowledge of rates based on value, and is conclusively presumed to have known that dry goods were classified as first-class for the purposes of fixing the rate for transportation, and furs were classified as double first-class. The agreement entered into between the parties, therefore, consisted of the bill of lading, in which the property is described as dry goods, and the tariffs filed with the Interstate Commerce Commission, specifying the rate to be charged for the transportation of dry goods, and was an agreement on the part of the defendant to transport dry goods and not furs.

The Federal common-law rule prior to the enactment of the Interstate Commerce Act was that a common carrier was not liable for the loss of goods of a different character than those which it had agreed to transport and for the transportation of which it received no compensation. (*Humphreys* v. *Perry*, 148

U. S. 627.) In that case it was held that the plaintiff was not entitled to recover for the loss of a trunk of jewelry which he offered to and which was checked by the defendant as his personal baggage, although he had paid a charge for the excess weight of the property. The ground upon which the carrier was held not liable was because there was no agreement on its part to transport property for the plaintiff except personal baggage, and as the contents of the trunk lost did not consist of the plaintiff's personal baggage there was no liability because there was no agreement to transport that property. In the opinion on this case the court says (page 641):

> "This principle is commented on in Story on Bailments, 9th ed., sec. 565, where it is said: 'It is the duty of every person sending goods by a carrier to make use of no fraud or artifice to deceive him, whereby his risk is increased, or his care and diligence may be lessened. And if there is any such fraud or unfair concealment, it will exempt the carrier from responsibility under the contract, or, more properly speaking, it will make the contract a nullity.'"

In *Hart* v. *Pennsylvania Railroad Co.*, 112 U. S. 331, 342, the court says (page 342):

> "As relating to the question of the exemption of a carrier from liability beyond a declared value, reference may be made to section 4281 of the Revised Statutes of the United States (a re-enactment of section 69 of the act of February 28, 1871, ch. 100, 16 Stat. 458), which provides, that if any shipper of certain enumerated articles, which are generally articles of large value in small bulk, 'shall lade the same, as freight or baggage, on any vessel, without at the time of such lading giving to

> the master, clerk, agent, or owner of such vessel receiving the same, a written notice of the true character and value thereof, and having the same entered on the bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner, nor shall any such master or owner be liable for any such goods, beyond the value and according to the character thereof so notified and entered.' The principle of this statute is in harmony with the decision at which we have arrived."

The rates established by railroad companies for the transportation of most articles are based on the classification of the property as shown by Official Classification No. 38 (Defendant's Exhibit "D"). A lower rate than that to which the shipper is entitled under the classification and tariffs of the carrier can as easily be obtained by a shipper by inserting an erroneous description of the character of the property in the bill of lading as by understating its value. The evidence in this case shows that this shipper had made other shipments of furs described as dry goods, and presumably he had obtained the benefit of the lower rate in those cases. His truckman testified that he had received instructions from his employer to describe all shipments received from this firm as dry goods, although it is conceded that they dealt in nothing but furs.

To permit the plaintiff to recover in this case the value of furs when the rate which he was charged was the lower rate applicable to dry goods, would enable him to obtain a preference over other shippers of furs who have correctly described their property in the bill of lading and paid the higher rate applicable to goods of that class, contrary to the provision of the Interstate Commerce Act.

POINT TWO.

The fact that the Trial Court found the misdescription was made without fraudulent intent is not material; the plaintiff is concluded by the bill of lading and the filed tariffs, and his remedy if any is against his agent who misdescribed the property.

The Appellate Division held that plaintiff was bound by the description of the property inserted in the bill of lading by his agent. The plaintiff's acceptance of the bill of lading precludes him from recovering for goods of a different class than those described, irrespective of whether or not the misdescription was fraudulent.

In *Great Northern Ry. Co.* v. *O'Connor, supra*, the facts were that plaintiff had personal effects weighing 545 pounds and worth $598, which she delivered to a transfer company, which was also a forwarder, to box and ship from Minneapolis to Portland, Oregon. The regular freight rate for such a shipment would have been $3 per cwt., but without express authority from her the company forwarded her goods with others under the terms of a tariff which named $1 as the rate on carload shipments of household goods valued at less than $10 per cwt. Although it appears that there was no fraudulent misstatement by the plaintiff, it was held that she was not entitled to recover in excess of the valuation upon which the freight charges were based; that she was bound by the bill of lading and her remedy, if any, was against the forwarding company.

In *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469, it appears that the consignors kept in their shipping office a book containing blank express receipts. One of these was filled out by their shipping clerk. When the wagon of the express company called at the office the express agent signed the receipt and the pack-

age was delivered to him by a boy assistant to the shipping clerk. No questions were asked as to the value of the property, and no value declared other than as shown in the receipt. The clerk who wrapped and marked the package did not know the value of it, and had no actual knowledge of the rates of the express company. The ground upon which the judgment in that case was reversed by the Supreme Court of the United States is stated in the opinion by Mr. Justice Lurton (page 476) as follows:

> "But the shipper in accepting the receipt reciting that the company 'is not to be held liable beyond the sum of fifty dollars, at not exceeding which sum said property is hereby valued, unless a different value is hereinabove stated,' did declare and represent that the value did not exceed that sum, and did obtain a rate which he is to be assumed to have known was based upon that as the actual value. There is no substantial distinction between a value stated upon inquiry, and one agreed upon or declared voluntarily. The rate of freight was based upon the valuation thus fixed, and the liability should not exceed the amount so made the rate basis. *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331, 338."

In *Reid* v. *American Exp. Co.*, 241 U. S. 544, the owner of an automobile delivered it to an express company in London to be forwarded to New York, declaring its value to be far in excess of $100. The express company had it boxed and delivered it to a steamship company, and accepted a bill of lading with a limitation of liability to $100. The property was damaged while being discharged by a stevedore from the ship. It was held that the liability of the steamship company did not exceed $100, that the stevedore was liable for the differ-

ence between that amount and the actual value of the property; and in case of failure to recover against the stevedore, the express company was liable to the shipper for the difference because it had accepted a bill of lading in which the value of the property was limited to $100, without authority from the owner.

The bill of lading which was issued by the defendant to the plaintiff in this case is a standard form of straight bill of lading approved by the Interstate Commerce Commission by its order No. 787 of June 27, 1908 (In the matter of Bills of Lading, XIV I. C. C. Reports, p. 346). In that form, a blank space is provided for the description of the articles and special marks, if any. The description of the property was inserted in the bill of lading by the expressman employed by the shipper, and after the property was delivered to the defendant and receipted for by it the shipper accepted the bill of lading containing the description inserted by his expressman. The plaintiff is, therefore, estopped from recovering the value of goods of a different character than those described in the contract of transportation, and upon which the charges were based and his remedy, if any, is against the expressman who misdescribed the contents of the case.

POINT THREE.

The Court erred in admitting evidence as to the marks on the case of goods.

It is alleged in the complaint in this action that "in consideration of a reasonable compensation then agreed to be paid to it by the plaintiff *and which compensation was the usual freight rate for dry goods* between New York City and Cincinnati," defendant agreed safely to carry the goods in question to Cincinnati. It would

have been unlawful and contrary to the filed tariffs for the defendant, if the goods had been described in the bill of lading as "furs," to have made an agreement to transport them at the lower rate provided in said schedules for the transportation of dry goods.

In *Atchison &c. Ry. Co.* v. *Robinson*, 233 U. S. 173, plaintiff's recovery was based upon an alleged oral agreement made by him with the agent of the defendant for the transportation of livestock. Plaintiff signed and accepted a livestock bill of lading, and the rate which he paid for the transportation of the property was the rate shown in the filed tariffs of the defendant for the transportation of property shipped subject to the terms and conditions of that bill of lading. In the opinion in that case the court says (page 180):

> "We regard these cases as settling the proposition that the shipper as well as the carrier is bound to take notice of the filed tariff rates and that so long as they remain operative they are conclusive as to the rights of the parties, in the absence of facts or circumstances showing an attempt at rebating or false billing. *Great Northern Ry. Co.* v. *O'Connor*, *supra*. To give to the oral agreement upon which the suit was brought, the prevailing effect allowed in this case by the charge in the trial court, affirmed by the judgment of the Supreme Court of the State, would be to allow a special contract to have binding force and effect though made in violation of the filed schedules which were to be equally observed by the shipper and carrier. If oral agreements of this character can be sustained then the door is open to all manner of special contracts, departing from the schedules and rates filed with the Commission. *Kansas City Southern Ry. Co.* v. *Carl*, *supra*, (p. 652). To maintain the supremacy of such oral agreements

> would defeat the primary purposes of the Interstate Commerce Act, so often affirmed in the decisions of this court, which are to require equal treatment of all shippers and the charging of but one rate to all, and that the one filed as required by the act."

In the present case prevailing effect has been given to the marks on the case over the description of the property in the bill of lading, and the defendant was held liable for the loss of goods of a different character than those which it had agreed to transport, because of the admission over the defendant's objection and exception of evidence that the plaintiff had marked the value and a description of the contents on the case itself.

In *D'Utassy* v. *Barrett, supra* (p. 426), it is said:

> "that having obtained a rate based on the declared value the shipper is concluded and there is no room for parol evidence to show otherwise. (*Mo., K. & T. Ry. Co.* v. *Harriman,* 227 U. S. 657, 670);"

Under the authorities above cited, it is respectfully submitted that inasmuch as the plaintiff obtained a rate based upon the declared nature of the property he should not have been permitted to introduce evidence of the marks on the case for the purpose of holding the defendant to a different liability than that evidenced by the bill of lading and filed tariffs.

POINT FOUR.

There was no duty on the part of the defendant to inspect the contents of the case and it is not liable because of its failure to do so.

In *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469, the defendant's rules, which were filed with the Interstate Commerce Commission, required that the agent of the express company ask the shipper the value of the property, and insert the value stated, or if no value was stated, stamp the package, "Value asked and not given." This was not done. The State court affirmed a judgment in favor of the plaintiff, upon the ground that the company's agent had failed to perform a plain duty, and it was in no attitude to complain that the shipper did not state the value. That judgment was reversed by this Court, which held that the shipper in accepting the bill of lading represented that the value did not exceed the sum specified therein, that the rate of freight was based upon the valuation and the liability should not exceed the amount so made the rate basis.

And in *Great Northern Ry. Co.* v. *O'Connor, supra*, the court says (page 515) "in view of the multitude of transactions it is not necessary that there shall be an inquiry as to each article or a distinct agreement as to the value of each shipment."

If a carrier is liable only for the value specified in the bill of lading issued to a shipper when its filed rules require its agent to ask the value of the shipper and insert the value stated in the bill of lading and he fails to do so, this defendant certainly was not required to open and inspect the contents of this case to ascertain whether the description in the bill of lading was correct, even though under the bill of lading it had the right to make such inspection. There is no obligation on the

part of a carrier to inspect the contents of all cases of goods which it receives.

> "The volume and methods of the business of transportation by railroads and transportation lines, render it practically impossible in most cases for the carrier to ascertain by examination the contents of packages received for carriage." *Miller* v. *Hannibal & St. Joseph R. R.*, 90 N. Y. 435.

The testimony of defendant's witness Bulger shows that it is not the custom of the defendant to have the contents of cases of goods inspected except where defendant has reason to believe that a particular shipper is misrepresenting the character of property delivered to it for transportation as described in the shipping receipt. The provision in the Bill of Lading merely reserves to the carrier the right to assess correct charges if it discovers by an inspection that the property has been misdescribed but is not an agreement on its part to make such inspection. The duty to correctly describe the contents of cases is imposed on the shipper by the Statute and the Schedules filed pursuant thereto.

It is respectfully submitted the judgment should be reversed.

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WILLIAM MANN,
of counsel.

NEW YORK CENTRAL RAILROAD COMPANY *v.* GOLDBERG.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 256. Argued March 20, 1919.—Decided May 19, 1919.

Under an interstate bill of lading providing that the owner or consignee shall pay the freight and all other lawful charges on the property, and, that if upon inspection it is ascertained that the articles shipped are not those described in the bill the freight charges must be paid upon the articles actually shipped, *held*, that an innocent misdescription of the goods, placing them in a class entitled to a lower rate under the carrier's filed schedules, merely imposed upon the shipper or consignee an obligation to pay freight charges according to their true character, and did not affect the liability of the carrier for a failure to deliver, there being no clause exempting the carrier or limiting its liability in case of such misdescription.

164 App. Div. 389, 221 N. Y. 539, affirmed.

THE case is stated in the opinion.

Mr. William Mann, with whom *Mr. Charles C. Paulding* was on the brief, for petitioner.

No appearance for respondent.

MR. JUSTICE PITNEY delivered the opinion of the court.

This was an action brought by respondent against petitioner in the Supreme Court of New York to recover damages equivalent to the value of certain goods shipped in interstate commerce and lost in transit. Plaintiff had judgment in the trial court, which was affirmed by the Appellate Division for the First Department (164 App.

Div. 389), and affirmed by the Court of Appeals without opinion. [221 N. Y. 539.]

The facts are as follows: On September 17, 1912, a firm of fur manufacturers in New York City caused to be delivered to defendant there for transportation to plaintiff at Cincinnati, Ohio, a case containing furs belonging to plaintiff of the value of $693.75. When the case left the consignors' possession it was marked with the name and address of the consignee, and with the word "furs" conspicuously displayed. It was delivered to a local expressman, whose driver delivered it to defendant and made out a bill of lading which defendant signed and upon which the action depends. This bill of lading described the goods as "One case D. G.," which admittedly means "dry goods." The misdescription was the driver's mistake, not made with any intent to fraudulently misrepresent the nature of the merchandise shipped. Defendant's clerk who signed the bill of lading relied wholly upon the representations of the driver as to the contents of the case, not seeing the case itself; and, so far as appears, no representative of defendant compared or had a convenient opportunity to compare the bill of lading with the marks on the case. At the time of the shipment the official freight classification filed with the Interstate Commerce Commission provided for a first-class rate for dry goods (65 cents per hundred pounds), and a double-first-class rate ($1.30 per hundred) for furs. As a result of the misdescription in the bill of lading, freight was charged at the smaller rate applicable to dry goods, instead of the higher one applicable to furs. No valuation was placed upon the goods, and no question of limitation of liability to a stipulated value is presented.

Defendant admitted that it received the goods for transportation, and that they were stolen in transit and never delivered to the consignee.

Defendant insists that it is not liable in any amount

for loss of the goods, because they were misdescribed in the bill of lading. Reliance is placed upon a line of decisions in this court relating to the limitation of liability of an interstate rail carrier where goods are shipped at a declared value at a rate based upon value and under a contract conforming to the filed tariff. *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 509; *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 650, *et seq.*; *Missouri, Kansas & Texas Ry. Co.* v. *Harriman*, 227 U. S. 657, 670; *Great Northern Ry. Co.* v. *O'Connor*, 232 U. S. 508, 515; *Atchison, Topeka & Santa Fe Ry. Co.* v. *Robinson*, 233 U. S. 173, 180; *Southern Ry. Co.* v. *Prescott*, 240 U. S. 632, 638.

The Appellate Division held that these cases did not go to the extent of relieving the carrier from all liability in case of a non-fraudulent misrepresentation as to the nature of the merchandise shipped, and that since there was no clause in the bill of lading exempting the carrier or limiting its liability in case of such a misdescription the carrier was defenseless.

Defendant's contention is that there is no responsibility for loss of the furs that were shipped because they were goods not of the same but of a different character than those described in the bill of lading, and were goods for the transportation of which a higher rate was established by its filed schedules. Were there otherwise any difficulty in answering this contention, it would be wholly relieved by the fact that the precise contingency was anticipated in the preparation of the form of the bill of lading and provided for by one of its conditions, which reads as follows: "The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped."

Clearly, the effect of this is that a misdescription of the

character of the goods, not attributable to fraud, merely imposed upon the shipper or consignee an obligation to pay freight charges according to the character of the goods actually shipped, and did not affect the liability of the carrier for a failure to deliver the goods.

Judgment affirmed.